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March 4, 2002

Robert E. Feldman, Executive Secretary  
Attention: Comments/OES  
Federal Deposit Insurance Corporation  
550 17th Street, NW.  
Washington, DC 20429

Re: FDIC Policy Statement Regarding Minority-Owned Depository Institutions; 67  
Federal Register 77; January 2, 2002

Dear Mr. Feldman:

On April 3, 1990, the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") adopted a Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions, in response to the enactment of Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. That Section 308 requires the Department of the Treasury to consult with the FDIC and the (now) Office of Thrift Supervision to determine the best methods for preserving and encouraging minority ownership of depository institutions. The revised Policy Statement could benefit minority-owned banks and savings associations, many of which are members of the American Bankers Association ("ABA"). The ABA 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 National Bankers Association ("NBA") is the leading trade association for the nation's minority- and women-owned banks.

### **Background**

Section 308 sets out several goals for the agencies to strive to achieve:

1. Preserving the number of minority depository institutions.
2. Preserving the minority character in cases of merger or acquisition.
3. Providing technical assistance to prevent insolvency of institutions.
4. Promoting and encouraging creation of new minority depository institutions.
5. Providing for training, technical assistance, and education programs.

The FDIC is now proposing to update its Policy Statement to better set forth its initiatives to achieve the goals of Section 308. First, the FDIC proposes to set forth specific definitions of “minority” and “minority-owned.” Further, under the proposal, the FDIC will maintain a list of minority-owned institutions onto which such institutions may self-certify themselves, will designate a national coordinator for the FDIC’s minority-owned institutions’ program, will provide a list of the types of technical assistance that such institutions may obtain from the FDIC (including special post-examination consultation), will work with trade associations for minority-owned institutions to provide training and technical assistance, will add a webpage to its website to promote the FDIC’s minority-owned institutions’ program, and will require FDIC’s regional directors to report quarterly on their activities to meet the goals of the FDIC’s programs.

## Comments

While ABA supports the FDIC’s proposed revisions to the Policy Statement, ABA is very disappointed that the FDIC’s proposal falls far short of providing the assistance that the FDIC could provide under authority granted to it by Congress under Section 804 of the Community Reinvestment Act (12 USC 2903). Section 804 was amended in 1992 to allow the federal banking agencies to give CRA credit for assistance provided minority- and women-owned financial institutions.<sup>1</sup> Observing that the federal banking agencies (“Agencies”) had never formally implemented this authority to aid minority-owned institutions, on October 14, 1999, the ABA petitioned the Agencies to either advise the industry on how this authorization would be implemented or else explain why the Agencies would not implement it. ABA wrote:

“[This] special provision of the Community Reinvestment Act authorizing the Agencies to consider as a factor in a majority-owned institution's CRA evaluation any investments, loan participations, or other ventures in or with minority institutions has been underutilized by banks. As a result, minority institutions have never benefited as much from this provision as was intended by the Congress. ABA believes that this is because when and how the Agencies would consider such investments in assessing CRA performance by majority-owned institutions has never been made clear to those banks by the Agencies.

“ABA believes that the Agencies should make clear when and how they will implement this special provision of the Community Reinvestment Act. In this letter, ABA not only requests that the Agencies do just that but also

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<sup>1</sup> SEC. 804. Financial Institutions; evaluations

(a) IN GENERAL.--In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall--

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

**(b) MAJORITY-OWNED INSTITUTIONS.--**In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate **Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.** [Emphasis added.]

recommends what specific guidance the Agencies should provide, based in an analysis of the Agencies' previous interpretations of situations that closely resemble probable investments and other ventures with minority institutions under Section 804(b) of the Act. Finally, ABA has presented one specific example of an investment or other venture under the statute, grants from the newly created Minbanc Foundation,<sup>2</sup> and requested that the Agencies provide guidance on how these investments would be treated by the Agencies, in order to better explicate the workings of Section 804(b). ABA respectfully requests that the Agencies respond with clear guidance through amendments to the CRA Q&A that will clarify this important aspect of the Community Reinvestment Act. The Agencies' prompt response will be greatly appreciated, not only by the American Bankers Association but also by numerous minority- and women-owned depository institutions.”

Despite this letter and several following oral and written communications, none of the Agencies has so far responded to this petition. The hopes of the ABA and the National Bankers Association that there would be a positive response were raised when then FDIC Chairman Donna Tanoue spoke to the National Bankers Association in Chicago on October 4, 2000. In that speech, the Chairman raised many of the questions that ABA had raised in its letter and seemed to endorse a very positive response.<sup>3</sup> The Chairman went further and

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<sup>2</sup> Directors of the Minbanc Foundation include staff of both the ABA and the National Bankers Association.

<sup>3</sup> The Chairman highlighted a number of activities of the FDIC to assist minority-owned financial institutions, arising from the FDIC's Policy Statement. The Chairman then went on to say:

“That's good -- but I don't think that it is enough -- and I have to ask myself whether we can find other ways to assist minority banks as ongoing concerns -- for their communities -- for their customers. More specifically, can we more effectively use a provision of the Community Reinvestment Act (CRA) that is intended to encourage other institutions to support minority-owned banks? In particular, have the banking agencies appropriately implemented a 1992 amendment to the CRA that specifically authorizes each agency, when evaluating a bank's CRA performance, to consider as a factor:

“Capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.”

“Today, I invite you to help us answer that question. We have a unique opportunity to address this issue when we revise the Interagency Questions and Answers on CRA, as we do annually. Or, as I suggested in a speech I delivered in June of this year, we could begin our comprehensive review of the existing CRA regulations this year rather than wait for that work to begin in 2002 as the regulators promised when the rules were adopted in 1995. Since the CRA rules were adopted in 1995, they have permitted banking regulators to consider favorably activities designed to help minority- and women-owned institutions better serve their own communities - as long as those activities are community development loans, investments, or services provided to minority institutions. And as long as these activities benefit low- and moderate-income individuals or areas within the assisting institution's assessment area or a statewide or regional area that includes its assessment area.

“However, as I mentioned earlier, the language in the statute itself does not limit activities to just community development loans or investments. Rather, in addition to community development loans or investments, the statute more broadly mentions capital investment, loan participations, and, I underscore, “other ventures” undertaken in conjunction with minority-owned banks. Other ventures -- you don't need to be a lawyer to appreciate that there may be some flexibility there -- and not by accident. This flexibility - which is not fully reflected in existing regulations or guidance - raises questions for which you may want to offer answers.

suggested that this positive response would be incorporated in the next reiteration of the Agencies' "Questions and Answers about CRA," but when the new revision of the CRA Q&A was released, the Agencies still had not implemented their authority to really aid minority-owned financial institutions. ABA and the NBA believe that now is the time to implement this authority to really encourage assistance to the nation's minority- and women-owned financial institutions.

## Conclusion

In conclusion, the American Bankers Association and the National Bankers Association support the proposed changes to the FDIC's Policy Statement. But in the words of former Chairman Donna Tanoue, "That's good -- but I don't think that it is enough -- and I have to ask myself whether we can find other ways to assist minority banks...." We believe that there are other ways that the FDIC and the other Agencies may assist minority banks. Specifically, the ABA and the NBA urge the FDIC to formally implement the authority provided in Section 804(b) in as broadly a manner as possible, for the benefit of minority- and women-owned financial institutions, as proposed in ABA's letter of October 4, 1999, and as recommended in ABA's comments to the FDIC and the other Agencies on the CRA Advance Notice of Proposed Rulemaking dated October 17, 2001.<sup>4</sup> If you have questions about this

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"We should ask whether banks could better use this special CRA provision to improve their CRA performance and, at the same time, assist minority banks in serving their communities. We also must ask whether the agencies are doing all we can to encourage both types of institutions to take advantage of these opportunities. First, shouldn't the regulators give CRA credit to an institution that lends assistance to a minority-owned bank, even if the bank receiving the assistance is outside the assisting bank's assessment area?"

"Taking it one step further: What about inside - or even outside - the statewide or regional area that includes an assessment area? It is a simple fact that most banks do not have minority-owned institutions in or near their assessment areas. Why should they be denied the opportunity for CRA credit for providing capital or operational or managerial assistance to a minority bank that needs it? Doesn't it make more sense to expand the opportunities for any bank to assist minority banks by providing favorable CRA consideration for any activity, supporting any minority bank, located anywhere in the country? Or at least those activities where minority-owned institutions are helping to meet low- and moderate-income credit needs of the communities in which they are located? It makes sense to me - how about you?"

See FDIC Press Release at <http://www.fdic.gov/news/news/speeches/archives/2000/sp04Oct00.html>.

4 From ABA's October 17, 2001, letter, page 13:

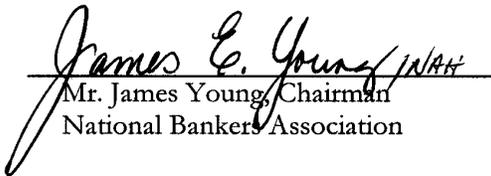
"In Section 804(b), the Community Reinvestment Act specifically authorizes each Agency to 'consider as a factor capital investment, loan participation, and other ventures undertaken by the [majority-owned] institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.' The Agencies have never adopted any regulations granting CRA credit for such investments, participations and other ventures, though ABA has been told that Agencies have occasionally given CRA credit on an ad hoc basis to individual institutions. ABA believes that the Agencies have done a disservice to minority- and women-owned institutions and low-income credit unions by failing to implement this authority. ABA requests that the Agencies issue regulations so implementing this unused authority.

"ABA notes that this provision of the statute has only one geographical restriction: that the "activity" help meet the credit needs of the minority- or women-owned institution's community. The statute makes no reference to the community of the majority-owned institution, so that such investing institutions could be given CRA credit for these specific investments, even though they might be outside of the institution's assessment area. ABA is aware that the Agencies have given CRA credit for investments in minority- and women-owned institutions on a case-by-case basis, but apparently these specific investments have never been in institutions outside of the investing institution's assessment area (community). **ABA recommends that the Agencies provide that such**

letter, please contact the undersigned or Paul Smith, Senior Counsel, American Bankers Association, at 202-663-5331.

Sincerely,

  
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Center for Community Development  
American Bankers Association

  
Mr. James Young, Chairman  
National Bankers Association

cc: Steve Cross, FDIC  
Dolores Smith, FRB  
David Hammaker, OCC  
Richard Riese, OTS

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investments, participations and other ventures result in CRA credit to the majority-owned institution without regard to the location of the minority- or women-owned institution or low-income credit union. Further, ABA recommends that grants for professional development and training of personnel of a minority- or women-owned institution or low-income credit union should count as either capital investment in the institution or as a credit-related service.”