American Bankers Association
Building Success. Together.

Robert G. Rowe, III
Vice President/Senior Counsel
Center for Regulatory Compliance
Phone: 202-663-5029
E-mail: rrowe@aba.com

May 17, 2013

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street, SW
Washington, DC 20219
Docket ID OCC-2013-0003

Robert deV.Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1456

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

Re: Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the joint agencies' proposal to clarify their interagency questions interpreting how Community Reinvestment Act (CRA) regulations apply. The proposed clarification or guidance is designed to address several issues of community development. The proposal is a follow-up to the outreach sessions the agencies conducted during the summer of 2010 on all matters pertaining to CRA and is the first item to be addressed of the many issues discussed during those meetings.

The proposal would revise five questions-and-answers under the existing guidance: (1) community development activities outside an institution's assessment area; (2) additional means to identify low- and moderate-income recipients of community services; (3) community service through service on the board of directors of a community development organization; (4) treatment of community development performance in the lending test of a large institution; and (5) quantitative consideration for certain community development investments.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $185 million in assets.

ABA appreciates the efforts that the agencies are making to clarify their expectations for bank performance under the CRA. ABA member banks of all sizes, charters, and business models are important to the economic well-being and health of communities across the United States. That is why we are concerned that the proposed steps are likely to fail to achieve the goals the agencies expect and, in fact, we believe that some of the proposed changes, particularly the first revision addressing activities outside a financial institution's assessment area, are actually likely to discourage community development rather than encourage it. We believe that it is important to revise the proposed steps to achieve the goals of serving local communities and their citizens.

I. Community Development Activities outside an Institution's Assessment Area(s)

The first clarification the agencies propose would "clarify" when activities outside a financial institution's assessment area would be eligible for consideration under CRA. Since CRA was enacted nearly 40 years ago, the banking industry has been driven by customer needs and interests to continue to evolve in the ways they serve customers and communities. Among other changes, the expansive growth in technology and mobile banking means that it is far easier for some customers to obtain financial services and for banks to reach customers and stay in contact with customers who are not near a branch or physical location. We find in the industry a variety of ways in which banks use new and traditional means to serve their customers, driven by their customers' preferences and by local conditions. For these reasons, the CRA regulations must be more flexible and accommodating than ever in evaluating the performance of individual banks in meeting their CRA obligations.

At the same time, especially following recent economic turmoil and its impact on communities around the United States, it is important to recognize that financial institutions large and small have diverse options to choose among in their efforts to serve the needs of their communities. ABA is concerned that the approach taken in the proposal unfortunately will fail to capture the entirety of the communities banks are serving and fail to recognize the beneficial performance banks are delivering tothe more expansive market footprints they are empowered to serve under their charters. Our members tell us that they fear that examiners and auditors will refuse credit forany activity that is not constrained to the bank's branch-boundassessment area. ABA understands that the motivation of this proposal is to allow CRA public evaluations to reflect service better in broader and often less traditional notions of a bank's community. However, we fear that the proposal will not remedy the constraints being experienced but will instead exacerbate them.

Before the proposed changes, the CRA rules provide that community development loans, qualified investments, or community development services that benefit an institution's assessment area or that benefit a broader statewide or regional area which includes the institution's assessment area can be considered for CRA. At the same time, to receive consideration for activities outside the assessment area that benefit the broader statewide or regional area, a financial institution must have first adequately addressed the community development needs of its assessment area. The agencies' rationale for proposing to change the existing language seems to want to address questions that have been raised about what it means to have "adequately addressed" the needs of an assessment area; a related second question has been raised with the current rules about how the agencies define a regional area. The agencies seem to be concerned that these questions, particularly the first one, become a barrier to some institutions engaging in activities outside their immediate assessment area and the changes are intended to encourage banks to entertain activities outside that area. However, the proposed solution goes in the wrong direction.

Assessment Area Bias. When the CRA rules were revised in 1995 to introduce the concept of assessment area (AA), the policy impetus was to encourage institutions to invoke recognized geographic concepts like political subdivisions and MSAs as the bounds of their "local communities." From the beginning the agencies recognized that this form of assessment area was both potentially over inclusive and possibly under inclusive depending on any particular bank's business plan and retail footprint—but in all cases it was an analytical starting point and in most cases it was actually quite serviceable as a common measure for capturing a bank's community.

The agencies spent some time assuring banks that predominantly operated, for example, in the southern part of a county with few loans in the northern part of the county that their expected assessment area should nonetheless be the county as a whole. Fears of being adversely rated for the sparser lending in the northern part were assuaged by assurance that performance context would take that into account.

On the other side of the coin, the agencies also recognized that institutions would be driven by economic and business realities to have retail footprints that extended beyond the building blocks of political geography—political subdivisions or MSAs—and that it was appropriate to provide favorable consideration for such lending.The initial Q & A guidance issued in 1996 states that consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area, provided the institution has *adequately addressed* the needs of borrowers within its assessment area. This Q&A is based on the regulation's preamble 60 FR 22156, 22165 (May 4, 1995) and was translated into in the original set of Q&As published at 61 FR 54647 on October 21, 1996. See, *Interagency Questions and Answers, __ .22(b)(2) and (3) at Q 4*.

The *adequately addressed* standard became a key element for addressing the expansive nature of the communities serviced by non-traditional business operations. By invoking performance context to adjust expectations about how much of the non-traditional institution's performance will be adequate for the purpose of meeting the hurdle for counting retail lending activity outside the assessment area, examiners could arrive at reasonable judgments about particular institution performance. Among the relevant factors examiners might consider were the amount of deposits attributable to the area, the type of loans offered by the institution and the demand for those loans within the area, the credit needs of the assessment area, the number of institutions within the area, and the relative visibility of the institution as an actor in its main office assessment area.

By considering these and similar factors, the examiner could conclude that the institution has done enough in its assessment area to be considered "adequate" as that term is used in *Interagency Q&A 4 at .22(b)(2) and (3)*, even though the level of performance in the immediate assessment area is not sufficient to warrant a satisfactory rating for the institution overall, given its capacity. This approach is illustrated in the public evaluation of Travelers Bank and Trust, FSB (November 1998) wherein the examiner reasoned as follows:

> *As measured solely by its loan volume in the Wilmington MSA, Travelers overall lending performance would be seriously deficient for a retail lending institution of its size. However, Travelers retail business operations are predicated on a non-traditional, non-branch distribution method employed to reach credit markets nationwide. This fact and other features of Travelers' strategies and operations provide an appropriate context within which to apply the standards of the lending test. … Evaluation of Travelers under the lending test revealed that 1.5% of its*

> *mortgage loan production by number and 0.9% by dollar amount occurred in the Wilmington-Newark MSA where Travelers is headquartered and has its retail deposit taking branch. This translates to 298 out of over 19,000 loans for $10 million out of $1.12 billion in originations. The percentage of mortgage loans in the assessment area to low- and moderate-income (LMI) individuals, and in LMI geographies exceeded that of all 1997 HMDA reporting lenders for the same products. This distribution record, combined with in excess of $1 million of community development lending in the New Castle County area, demonstrated that the institution* ***adequately addressed*** *the needs of borrowers in the assessment area* ***given its performance context****. Accordingly, further favorable consideration was given to Travelers record of serving low- and moderate-income borrowers* ***nationwide****. [Emphasis added.]*

Far from ignoring its assessment area, Travelers was a leader in LMI penetration in the Wilmington MSA even though less than 1% of its mortgage loan value was originated in its one and only branch-based assessment area. But Travelers was not obligated to be a category killer in Wilmington, it only needed to address adequately the assessment area's need before being entitled to consideration of performance outside the assessment area. It did that and more. As a leader in the MSA it did much more than "adequately" perform in its assessment area. Application of this approach also appears in public evaluations for Travelers Bank and Trust, FSB (July 2001), and Shelter Financial Bank (April 2001), for example.

This illustration of the adequately addressed standard is instructive for purposes of commenting on the proposed changes to CRA Q&A .12(h)(6).

In its original form (and designated as .12(h)(5)), this Q&A was primarily focused on conveying the message in its initial paragraph that an institution's assessment area need not receive an immediate or direct benefit from institution participation in a broader statewide or regional activity. Unfortunately, the additional verbiage of the original language, "provided the purpose, mandate or function of the activity includes serving geographies or individuals located with the institution's assessment area," would later prove restrictive and be subsequently revised. In April 2000 after having already failed in a March 1999 proposal to convey clearly agency intent to expand this standard, the agencies took another shot at it in 65 Fed. Register 25088, 25090-1 (April 28, 2000.) This proposal was finalized in 66 Fed. Register 36620, 36621 (July 12, 2001) giving us the current version of Q&A .12h(6). Rather than simply eliminate the purpose/mandate/function language, the fix was to insert the *adequately addressed* standard for considering broader statewide or regional community development activities that neither benefited nor had the express purpose of benefiting an institution's assessment area.

With the latest proposal, the agencies take yet another run at conveying a clear message for when broader statewide or regional community development activities should receive positive consideration in a CRA evaluation. This time the agencies' proposal is to abandon the "adequately addressed" standard and substitute what upon close reading is a more micro-managing and counter-productive standard that ends up far wide of the mark of expanding favorable consideration.

In the proposed revisions, the agencies first want to reaffirm that an activity that benefits a larger area that includes the institution's assessment area will be given consideration, and so the revisions will retain the statement that an assessment area does not need to receive an immediate or direct benefit. ABA agrees with that premise. The existing approach also states that the activity "must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s)", with an emphasis on community development organizations that serve a broader statewide or multi-state area that includes the bank's defined assessment area. As noted in the current guidance, "[t]he regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development" but that these organizations operate on a broader basis than the individual institution's assessment area.[2]

The crux of the new proposal is the substitution of the following language for the "adequately addressed" standard: For community development activities in the broader statewide or regional area that includes the assessment area, but will not benefit the assessment area, they "must be performed in a safe and sound manner consistent with the institution's capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment areas(s)."

ABA members see this new standard as complicating and obstructing the ability of institutions to be properly evaluated for pursuing opportunities in their statewide or regional areas. First, the overall CRA obligation is tempered by the assurance that it does not require institutions to act in an unsafe or unsound manner. This is an overarching principle explicitly written into the law. It is not necessary to repeat it in the Q&A as an activity-by-activity condition of community development outside the immediate assessment area any more than it is appropriate to append it to qualifying community development inside an assessment area. Second, requiring the institution to demonstrate its capacity to oversee the activity has no CRA foundation and expects the bank to perform a role outside of its traditional competency. If anything it runs directly counter to the decades old recognition of doing well by partnering with community development organizations and programs that bring the expertise while the banks provide the capital. Nothing is gained by banks being expected to *oversee* the likes of LISC, the Ford Foundation, or the myriad other established community development organizations. This condition springs out of thin air without any policy rationale for why it applies to outside assessment area activity but not to inside assessment area activity. Neither of these conditions is responsive to any problem experienced with respect to the existing Q&A. ABA objects to both of these conditions and urges the agencies to reject them.

Finally, the proposed requirement that the activities "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" only compounds the very problem that has been experienced with the current Q&A: namely, demonstrating that more could not be done inside the assessment area. This has been the error too many examiners unschooled in the *Travelers* type of analysis have mistakenly insisted upon when applying the adequately addressed standard. In other words, the proposal codifies the problem, it does not solve it. No matter what language is appended after to guide the examiner, the problem will remain that fungible funds could always have been redirected to just one more activity inside the assessment area, and therefore quite clearly some challenged outside assessment area activity will be "in lieu of, or to the detriment of" an inside assessment area activity.[3] Consequently, if the agencies are truly trying to clarify and signal greater willingness to accept more statewide or regional activity that does not strictly benefit the assessment area, they should abandon this "in lieu of, or to the detriment of" requirement.

[2] CRA Questions and Answers, .12(h)-6.

[3] For example, in the Travelers evaluation, there is no doubt that the company could have spent more in Wilmington. The MSA had literally hundreds of community non-profits looking for funds. Any community organization could have asserted that $X spent outside the MSA could have been spent inside the MSA thereby challenging the favorable consideration of virtually any project outside the assessment area.

ABA urges the agencies to solve the problem of giving due consideration to statewide and regional activity in an area that includes the assessment area but may not directly benefit it, by taking the most direct course and jettisoning the distinction they created by adopting the purpose/function/mandate language. Whatever the concerns were in 1997 that divided types of statewide or regional activity that did not benefit the assessment area into those with or without an express purpose/function/mandate to serve the assessment area, they are not sufficient to warrant policing the distinction in the 21st century reality of banks serving the entirety of their communities. In the years immediately after the 1995 regulation it is understandable for the agencies to have proceeded cautiously to assure that branch-based assessment areas were not ignored, but no such serious hazard exists today. Banks do not invest in statewide or regional activities because they are evading their assessment areas. They do so because they and their customers identify with the broader view and the more dispersed needs of a wider concept of community.

To accomplish this simplification and vindicate the apparent motivation of the agencies for the proposal, ABA recommends that Q&A .12(h)(6) be amended by putting a period after the word "activity" in the fifth sentence and eliminating the rest of the proposed Q&A's language.[4]

Otherwise, the agencies would have to do the much harder (and likely less satisfactory) work of training all their examiners to apply the "adequately addressed" standard the way it was meant to be applied and that is illustrated by the *Travelers* line of analysis. The standard of *adequately addressed* was intended to be a permissive standard, not an obstacle to receiving favorable consideration. Examiners must keep that in mind when applying it and giving full effect to the fact that community development loans, investments, and services are all fundamentally defined to embrace statewide and regional areas as their legitimate scope.

Regional Area. In the context of serving the needs of the bank's assessment area, the agencies also propose to modify the description of what is meant by regional area to provide clarity. Again, examiners will start with performance context and the size of the area and the actual benefit to the institution's assessment area. Where the regional area is larger, the agencies note that the benefit to the institution's assessment area is likely to be more "diffuse" and therefore less responsive.

Under the proposed revision, a regional area will be defined as an intrastate or multistate area that includes the institution's assessment area. Typically, a regional area will have some geographic, demographic, or economic dependency that defines it, will often be commonly referred to by something like "tri-state area," and may possibly be defined by the scope and purpose of a community development organization or initiative.

ABA agrees that this change is likely to be helpful. However, instead of altering the existing description, better examiner training would be better. There are a number of appropriate ways to define a regional area, and examiners should understand that banks have the flexibility to determine and identify an activity that includes its region. ABA believes that over the last 18

---

[4] Accordingly the new Q&A would read as follows: "*A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity.*"

years Public Evaluations reveal numerous permissible ways to define “regional area.” We encourage the agencies to mine these data, publish such examples, and train examiners to leverage such precedent to evaluate favorably investments, lending, and services that are embraced by the range of regional areas that are appropriate under diverse performance contexts. The culture of CRA examination must view the notion of “regional area” as permissive, not prohibitive, if the agencies are to grasp the result they profess to reach.

ABA strongly disagreeswith the notion that the larger an area covers, the more diffuse the benefit. First, this is inconsistent with the concept that there need not be a direct or immediate benefit to a bank’s assessment area for an activity to qualify. Moreover, this is almost an invitation to examiners to take a larger area and minimize or discount the credit that an activity will be given. ABA recommends that the final rule allow an institution to define region, as with an assessment area, as long as the definition is logical and includes the bank’s assessment area, and that the examiner should accept the way the bank has thus defined the applicable region. If an activity serves the region, it should be granted CRA credit.

II. Investments in Nationwide Funds

The agencies also have proposed to clarify the existing CRA guidance to address questions about the propriety of CRA credit for investments in nationwide funds. In 2009, the agencies addressed investments in nationwide funds. At that time, the Q&A advised institutions that they could provide documentation from the fund to demonstrate the geographic benefit to its assessment area or broader statewide or regional area. Unfortunately, the side-letters came to be seen as restrictions which had the effect of minimizing the benefit the fund might provide under CRA to all but one or two institutions. Since nationwide funds can be beneficial resources for community development organizations and activities, commenters have recommended that favorable consideration be given to any investment in a nationwide fund and that the documentation requirements should be streamlined and simplified.

To address these concerns, the proposed revisions are designed to add flexibility to the type of documentation needed to show that an investment in a nationwide fund benefits the institution’s assessment area or larger statewide or regional area. Examiners will be reminded to consider any information or documentation provided by the institution that supports the relationship. For example, the fund’s prospectus may provide appropriate information about where investments will be targeted. While ABA believes this is a step in the right direction, we are also concerned that it may add a level of complexity and also become an invitation to examiners to restrict the usefulness of nationwide funds for CRA purposes. If the fundamental goal is to encourage investments that will benefit communities across the United States, and if a financial institution has taken steps that first consider the needs of its own assessment area, then any investment in a nationwide fund should be encouraged. As acknowledged in other parts of the rule and existing guidance, the agencies recognize that an immediate or direct benefit may not be apparent for an institution’s own assessment area. As long as the fund satisfies the geographic bounds of the long-accepted standard for community development activities (i.e., regional or statewide area), then the investment should receive favorable consideration.

Another proposed change would delete from regulatory guidance any suggestions regarding written documentation by the fund demonstrating earmarking, side letters, or pro-rata allocations. As noted, while these side-letters or other supplemental documentation was intended to let financial institutions demonstrate to examiners that their investment had a direct benefit to certain communities, i.e. its assessment area, the unintended consequence of the existing guidance has been to discourage all but the bank receiving the side-letter from investing in the fund. As a result, some of these funds became “captive” to one or two institutions, undermining the utility of these nationwide funds.

ABA supports the change, with some qualification. If additional information is needed or helpful to supplement the prospectus or otherwise confirm that a benefit is conferred on a specific assessment area, it should be permitted. Given the fact that the agencies have identified any number of communities across the United States that currently need financial support in many ways, it seems counter-productive to take steps that limit or discourage the use of nationwide funds. These larger funds can often be more efficient and effective in allocating resources and should be encouraged.

Another proposed element to the revisions will stress that investments in nationwide funds may be especially appropriate for other retail institutions. ABA believes that it is appropriate for larger retail institutions with national brick-and-mortar deposit taking operations. For other retail institutions, the proposed revisions recommend reviewing the fund’s investment record to ensure it is consistent with the institution’s own investment goals and the geographic considerations of the CRA. This should not be an invitation for examiners to require a financial institution to monitor or oversee constantly the activities of an investment fund since that is contrary to the purpose and benefit of these investments. Again, ABA encourages the agencies to ensure that examiners are properly trained and educated to avoid undermining these goals.

In addition, the agencies propose adopting similar language to what was proposed for Q&A .12(h)(6). As noted previously, ABA believes this undermines the intent of what the agencies hope to accomplish. Including this restrictive language in the final rule actually is more likely to serve as a disincentive and discourage financial institutions, particularly community banks, from entertaining any investments in nationwide funds since, as noted, “in lieu of or to the detriment of” is an invitation to examiners and auditors to find any activity within an assessment area that might have been addressed but was not funded as the basis to defeat credit for an activity outside the assessment area. For all the reasons presented earlier, ABA strenuously objects to this language and the related duplicative language referring to safety and soundness and oversight.

In addition, as incorporated in the standards for nationwide funds, the phrase “may not be conducted” is prohibitory in a manner beyond the power of CRA. CRA does not authorize bank activities or investment powers. CRA only gives credit to the exercise of bank activities for CRA purposes. But CRA cannot and does not tell bankers what activities or investments “may not be conducted.”

In the end, the standard sought to beimposed in both Q&A .12(h)(6) and .23(a)-2 should be withdrawn. The other components of proposed Q&A .23(a)(2), with the improvements suggested above, will provide sufficient standards for assuring nationwide funds are treated properly for CRA public evaluation purposes.

According to the agencies, the proposal stresses that it is important to recognize that this proposed revision is limited to nationwide funds. Investments in state or regional funds will continue to be governed by existing guidance. ABA questions why there should be a distinction between state and regional funds and nationwide funds. Fundamentally, they serve very similar purposes, and that is to develop funds that engage in community development activities that benefit a broader area. ABA believes that this is becoming an artificial distinction that serves no real purpose and that treating all investment funds alike would greatly streamline CRA activities and evaluations, eliminating unnecessary red tape while encouraging that funds instead are devoted to activities that benefit communities.

III. Community Services Targeted to Low- or Moderate-Income Individuals

A third area for proposed revision to the existing guidance is designed to make it easier for financial institutions to demonstrate that an activity benefits low- and moderate-income individuals. It is helpful for the agencies to establish flexible criteria to identify qualified individuals. Unfortunately, all too frequently, bankers report that inability to demonstrate clearly to an examiner that an activity decidedly benefits low- or moderate-income individuals is likely to defeat CRA credit for an activity and in turn discourage many worthwhile activities that would benefit local communities. Therefore, ABA applauds any simple and easily applied mechanisms that identify appropriate low- and moderate-income areas or individuals for CRA credit.

The proposal is designed to address two particular situations that have raised questions about how to determine whether an activity benefits low- and moderate-income individuals where clarification has been requested: (1) schools where a majority of students receive free or reduced-price meals; and (2) individuals eligible for Medicaid.

For school lunch programs, eligibility to participate is often based on USDA programs which in turn are based on nationwide incomes. However, CRA analysis considers *local* incomes, and the lack of consistency has caused some examiners to deny credit. The agencies propose to clarify that where service is provided to students or families at a school where the majority of students qualify for free or reduced-price meals under the USDA National School Lunch Program, the community service will be deemed provided to low- or moderate-income individuals for CRA purposes as well. ABA supports this change since it will simplify the identification of schools which are eligible.

However, ABA recommends that the agencies consider adding a second qualifier which may be easier to apply. We are not suggesting this be adopted in placeof the proposed use of the USDA program but rather that it be a second or alternative means to identify qualified schools. If a school is eligible or a recipient of funds under Title I of the Elementary and Secondary Education Act of 1965,[5] a program also based on low- and moderate-income eligibility, it would be another simple mechanism to identify eligible individuals. Since the goal is to benefit the community, ABA suggests the agencies add this as a second alternative criterion.

Similarly, Medicaid is usually available only to individuals with limited income or assets. Generally, the income levels used to determine Medicaid eligibility are less than or similar to income levels considered low- or moderate-income under CRA. Therefore, the proposal would include a new example that services targeted to Medicaid recipients will be deemed to satisfy the CRA requirement. Again, ABA supports this adjustment to the regulations.

Since examiners place such a heavy reliance on the low- and moderate-income criteria, and since information about the income levels of individuals in many different programs is not readily or easily accessible, ABA encourages the agencies to continue to find other simple and easily applied means to identify when a community or group of individuals fall within this category so that an activity which benefits the program can also be favorably considered under CRA. For example, there are numerous government programs at the federal, state, and local level which are specifically designed to assist low- and moderate-income or underserved individuals and communities. Similar to school lunch programs and Medicaid recipients, financial institutions

[5] See http://www2.ed.gov/policy/elsec/leg/esea02/pg1.html

should be able to rely on these government-sanctioned programs to demonstrate the community development purpose. For example, programs like HUD section 8 vouchers, food stamps, and other government programs designed to benefit low- and moderate-income individuals should be sufficient to be used as a proxy for community development eligibility under CRA.

IV. Service on the Board of Directors of an Organization Engaged in Community Development Activities

Previously, the agencies indicated that service on the board of directors of an organization that promotes credit or affordable housing meets the criterion that a community development service be related to financial services. The agencies propose to provide further clarity by modifying the Q&A to include service on the board of directors as an explicit example of a technical assistance activity that can be provided to a community development organization which would receive consideration as a community development service. ABA believes this is appropriate. We also suggest that the example make it clear that the bank representatives on such boards need not themselves be senior bank executives, but may be any other bank employee who is serving the normal functions called for by a non-profit board member.

ABA also suggests that the agencies make the application of qualified community development services more flexible to ensure community organizations are given needed support. For example, community development organizations often need legal assistance, IT support, or guidance on human resources issues. While these are not financial in nature, they are the kinds of professional activities that are inherent in the operations of every financial institution. It seems counter-productive to deny CRA credit when a financial institution uses its professional expertise to support a community organization in these areas, and ABA recommends this be changed.

In addition to the preceding revisions to the existing Q&As, the proposal would add two new questions and answers.

V. Qualified Investments

The first new Q&A would address the quantitative consideration given to a particular type of investment. The investments or loans in question are those where a community organization is provided with a lump sum that it in turn invests in instruments that do not have a community development purpose but instead uses the income from the investment to fund its activities.

The proposal would clarify that only the amount used to benefit the organization's activities would be counted for CRA purposes. For example, if a financial institution provided a community development organization with a lump sum of $1 million for one year which the community development organization invested in T-bills, uses the income from the investment to carry out its community development activities, and then returns the capital to the financial institution at the end of the year, only the income from the investment would be what is counted for CRA purposes.

The agencies should make it clear that this proposed restriction does not apply to instances where the recipient temporarily places the funds into an interest-earning account until the funds can be used for their ultimate purpose, and that there is a distinction between temporary investments and longer term investments. However, ABA is concerned that the proposed language could be confusing in application and misread by examiners.

ABA believes that a simpler approach, which is more likely to encourage financial institutions to support community development activities, would be to grant CRA credit for the amount of the commitment. This simple application should apply to both investments and loans. Even though the principal balance of an investment may return to the financial institution, while it is outstanding the financial institution has ceded the right to the funds and foregoes the ability to use the funds for other purposes. Certainly, within the performance context, a trained examiner should be capable of making the judgment that an investment or loan which is entirely used or applied to community development activities should be given more favorable treatment than an investment which is "parked" in something other than resource that benefits community development. However, by imposing the restrictions that it does, ABA believes that this is likely to discourage activities which could ultimately benefit the community.

VI. Community Development Lending in the Lending Test for Large Institutions

The agencies also propose to add a new Q&A that would clarify that community development lending performance is always considered as a factor in the institution's lending test evaluation and rating. The revision is designed to address inconsistency among the agencies.

The proposed change would provide that, "[a]n institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating." The examiner would make this evaluation in the context of the institution's business model, community needs, and opportunities. The agencies have indicated that the underlying rationale for this change is to ensure that the FDIC, Federal Reserve and OCC are consistent.

ABA certainly supports efforts to achieve consistency among the agencies. However, ABA believes that the language as proposed only confuses the issue and is fundamentally a step in the wrong direction since it is likely to discourage community development activities. To begin with, it seems to imply that community development lending is mandatory, which is singularly inappropriate. Moreover, ABA seriously questions whether the agencies have carefully considered the unintended consequences that are sure to ensue from the precept that a community development activity could be considered as a detractor. Treating an activity as a negative will interject a level of caution that will discourage large banks from engaging in complex activities or any that are less than 100% certain of receiving favorable CRA credit, a step that is contrary to the fundamental goals of the CRA. Therefore, instead of the proposed language, ABA suggests that the agencies simply state that community development lending is clearly optional and is one component of the lending test.

It is critical that the agencies clarify in the final rule that community development lending is optional and not mandatory, since the proposed language seems to imply that large banks must engage in community development activities. Many banks examined under the large bank test do not have the expertise to engage in complex and sophisticated transactions. Mandating community development lending goes far beyond the statutory underpinnings of the regulation and crosses the line into inappropriate government directed capital allocation. Instead, the agencies should clarify that ***if*** a large bank engages in community development lending, it will be considered as part of the lending test and can have a neutral or positive effective but *not* a negative effect.

At the same time, ABA suggests that the proposal that examiners will consider community development lending as a potential negative factor is inappropriate and very likely to be a disincentive to many projects. If a project is complicated or requires a great deal of effort yet has a more than negligible potential to be considered negatively in an overall lending test rating, no prudent banker would or should pursue that project. This element of the proposal is another example of well-intended language that is more likely to serve as a disincentive to imaginative or creative thinking and instead encourage bankers to focus on activities where favorable outcomes and ratings can be assured. Last year, the Federal Reserve Bank of San Francisco in conjunction with the Low Income Investment Fund published a series of essays entitled, *Investing in What Works for America's Communities.* In the foreword to the book, Federal Reserve Governor Elizabeth Duke commented that, "[s]uccesful community development is an entrepreneurial enterprise." The proposed language which suggests there is a potential downside to community development lending can only serve to discourage entrepreneurial efforts in this sphere.

<u>Exam Consistency</u>
One fundamental over-arching theme in the preceding discussion and one which has concerned many ABA members and others for quite some time is the crying need to ensure consistency among examinations, among regional offices, and among agencies. All too often we hear anecdotal evidence from member banks that one will receive credit under a CRA examination but that the same activity – for example, one that qualified using a school lunch program – that received credit during one examination will be denied credit two years later during a second examination conducted by the same agency but a different examiner. Similarly, one bank will report that credit was grated for an activity while a bank in another region of the same agency will conduct a similar activity but be denied credit. Or, the most common scenario and one which should not happen, two banks in the same community will conduct virtually identical community development activities and yet one will receive credit from one prudential regulator while another will be denied credit. All these examples underscore a problem with examiner training, since there is one set of regulations.

ABA strongly encourages better and more uniform training for examination teams. Interagency training would certainly be helpful. At the same time, if the agencies want to encourage community development goals, then it would be prudent to establish a clearing mechanism through the Federal Financial Institutions Examination Council (FFIEC) to ensure that questions from examiners – or from bankers – are resolved quickly and consistently. All too often it seems that examiners are making subjective judgments, rejecting activities that have already met agency muster, thereby leading to disparate results. Similarly, a central clearing house through the FFIEC would ensure that questions like the credit for school lunch programs do not take years to resolve. Delay or confusion about possible CRA credit only discourages financial institutions from pursuing beneficial programs and undermines Congressional intent and public policy.

<u>Conclusion</u>
ABA appreciates the agencies' efforts to make CRA evaluations more responsive to current day community development realities. While well-intended, it is important that changes to the underlying guidance not be applied by examiners or auditors in such a way that they discourage activities that can be beneficial. All too frequently, we hear reports from bankers that examiners are reluctant to acknowledge the productive activities that serve the purposes of CRA solely because they do not meet some bureaucratic criterion. At a time when community needs are so great, the agencies should be encouraged to train examiners to evaluate CRA performance with the flexibility needed. If examiners and auditors approach CRA with a check-the-box mentality it neither serves the needs of local communities nor carries out the underlying mandate of the Community Reinvestment Act.

At the same time, when the agencies held the outreach sessions three years ago, many other areas of the CRA regulations were discussed. ABA encourages the agencies to continue to work on the additional elements of the rule that were raised at those meetings and looks forward to working with the agencies to update the CRA to serve the needs of today's communities.Last month, the Federal Reserve Bank of San Francisco hosted a program on ***Resilience and Rebuilding for Low-Income Communities: Research to Inform Policy and Practice.***The discussions during the forum clearly underscore the need to encourage flexibility and creativity to solve the many problems facing communities across the United States. Examiners and guidelines need to encourage and not serve as a disincentive to such an approach. ABA is concerned, though, that many elements in the proposed guidance move in the wrong direction. Careful drafting of guidance, greater flexibility, and ultimately better training for examiners are vital to avoid a counterproductive outcome.

Thank you for the opportunity to comment. ABA looks forward to working with the agencies to continue to update and streamline the CRA so that we do not revert to the situation faced in 1992 when CRA compliance was a matter of navigating red tape and not serving local communities. It is important to ensure that the application of CRA requirements is simple and straightforward and that financial institutions are encouraged to find as many ways as possible to support their local communities.

Sincerely,

Robert G. Rowe

Robert G. Rowe, III
Vice President & Senior Counsel