Capital One Financial Corporation
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September 10, 2007

Office of the Comptroller of the currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. ID OCC-2007-0012
Regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., N.W.
Washington, DC 20551
Attention: Docket No. OP-1290
Regs.comments@federalreserve.gov

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
RIN 3064-AC97
Comments@FDIC.gov

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: ID OTS-2007-0030
Regs.comments@ots.treas.gov

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

Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One") is pleased to submit comments on the federal banking agencies' (the "Agencies") proposed new and revised Interagency Questions and Answers regarding the Community Reinvestment Act ("CRA").[1]

[1] 72 Fed. Reg. 37922 (July 11, 2007).

Capital One Financial Corporation is a financial holding company whose principal subsidiaries, Capital One, N.A., Capital One Bank, and Capital One Auto Finance, Inc., offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. As of June 30, 2007, Capital One's subsidiaries collectively had $85.7 billion in deposits and $144 billion in managed loans outstanding, and operated more than 720 retail bank branches located in New York, New Jersey, Connecticut, Louisiana, and Texas. Capital One is a Fortune 500 company and is included in the S&P 100 Index.

Capital One commends the Agencies for giving their attention to the Community Reinvestment Act, an important statute and regulation, and for offering many thoughtful and helpful clarifications and additions. Capital One takes seriously its responsibility to the communities that it serves and in which it is located, including our responsibilities under the Community Reinvestment Act, and we appreciate the additional guidance that the Agencies have given.

1. A Few Adjustments to the Proposed Questions and Answers Would Be Desirable

A very small number of adjustments to the Agencies' proposed guidance would be helpful in order to stimulate, or to remove unnecessary impediments to, banks' engaging in worthwhile lending, investment, services, and community development activities, in furtherance of the aims of the Community Reinvestment Act.

A. "Other Loan Data"

Proposed new Question III, along with clarification of a current question and answer, enumerates a number of activities as "other loan data" that will be considered in an institution's CRA evaluation.[2] Those activities include, among others:

- Letters of credit
- Loans for mixed-income properties
- Modification, extension, and consolidation agreements (MECAs)

Capital One recommends that these activities be assessed among the core activities of the lending test rather than as "other loan data." Relegation of these activities to "other loan data" may result in banks receiving less consideration for them than the activities merit.

Several considerations support the enhanced treatment we recommend:

- Letters of credit are a critical component of affordable housing development. Though they constitute credit enhancements and thus do not fund in the ordinary course of business (but only when a project is troubled), they are fully underwritten contingent liabilities and should receive full recognition.

[2] Q&A § __.22(a)(2)–3, 4, 72 Fed. Reg. at 37925, 37940.

- As the current question and answer recognize,[3] MECAs achieve the same results as purchases or refinancing. There is therefore no basis for distinguishing this type of loan facility, and they should receive full recognition.

- Many public policy initiatives recognize mixed-income housing as preferable to the development of housing that is exclusively or heavily low- and moderate-income ("LMI"). Mixed-income housing contributes to the creation of economically integrated communities, which are preferable to the creation of concentrated pockets of poverty. And as a practical matter, mixed-income development provides cross-subsidization opportunities that make affordable housing development more economically feasible. In addition, while the proposed question and answer speaks of "a certain amount or percentage of units … set aside for affordable housing," banks do not normally determine the portion of a development that is affordable to LMI households. Rather, banks respond to local governments that set housing policy, typically in the form of providing subsidies. Banks should be encouraged to provide financing that supports those housing policies, by allowing full CRA consideration for those loans.

B. National or Regional Community Funds

In new Question IV,[4] the Agencies would require that, to obtain CRA consideration for an investment in a national or regional fund with a primary purpose of community development, an institution must demonstrate that the investment meets the geographic requirements of the CRA regulation. While Capital One endorses the historic and current regulatory focus on assessment areas, we also believe there are special circumstances where exceptions should be made to that approach. Such exceptions should be implemented on a limited basis to ensure that the assessment area basis for evaluation is sustained, maintaining the integrity and long-term viability of CRA.

Capital One recommends that investments in low-income-housing tax credit ("LIHTC") funds be fully considered for CRA purposes without geographic limitations. And, if the agencies adopt this approach, we respectfully request that the Q&A clearly show how such investments will receive fully weighted credit. We note that many banks have been unwilling to invest in disaster relief areas outside of their assessment areas because of a lack of clarity regarding full credit.

Several considerations support our position for an exception for LIHTC investments as described above:

- An established market has developed for LIHTC investment vehicles on multi-state and national bases, in order to promote efficiency and to diversify geographic risk. The Agencies' guidance should align with this favorable market development.

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[3] Q&A § __.22(a)(2)–3.

[4] Q&A § __.23 (a)–2, 72 Fed. Reg. at 37925, 37944.

- If investments must be attributed to the investing banks' assessment areas, these organizations will be less likely to undertake projects or investments in communities in which there are no banks or a limited number of banks – yet those communities may have the greatest need.

- Imposition of geographic restrictions may decrease the ability of national or regional funds to attract capital.

- Restricting the utility of these funds as CRA investment vehicles may reduce the availability of affordable funding for some housing developments that are higher risk, but nevertheless important, such as special needs housing and single room occupancy (SRO) projects.

If the Agencies continue to impose geographic restrictions on national and regional community development funds, then, at a minimum, we recommend that the fund be given the flexibility of using any combination of "earmarks" (or side letters), and pro rata allocations, to achieve the necessary geographic assignment within a single syndication. The proposed question and answer suggest that the fund must choose one or the other technique, but such an all-or-none choice may be infeasible in many cases, and hence the Agencies' guidance would not have the desired effect of attracting investment to these important vehicles.

2. Proposed Clarifications That Capital One Especially Supports

In proposed Question IX,[5] the Agencies would clarify that the limitations that apply to reporting refinancing and renewals of small business loans also apply to refinancing and renewals of community loans. This is a helpful clarification, and we encourage the Agencies to adopt it as proposed.

Also, we support the Agencies' proposal to add a presumption that investments in New Markets Tax Credit–eligible Community Development Entities (CDEs) promote economic development. This revised guidance will encourage banks to invest in those important vehicles.[6]

3. Request for Additional Clarification with Respect to High-Cost Areas

A current interagency question[7] provides for flexibility in the performance standards to allow examiners to account for conditions in high-cost areas. "For example," say the Agencies, "examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining, or acquiring a house when determining whether an institution's loan to or

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[5] Q&Q § __.42(b)(2)–5, 72 Fed. Reg. at 37926, 37957.

[6] Q&A § __.12(g)(3)–1, 72 Fed. Reg. at 37926, 37930-31.

[7] Q&A § __.12(h) and 563e.12(g)–3.

investment in an organization that funds affordable housing for middle-income people or areas, as well as low- or moderate-income people or areas, has as its primary purpose community development." Capital One is active in certain high-cost areas, and this Interagency Question and Answer is useful. However, the actual consideration provided for such loans and investments remains unclear. We recommend that the Agencies increase the utility of this guidance by providing some concrete examples of projects and circumstances in which loans to non-LMI individuals will be fully considered in light of the high-cost area in which they are made.

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Capital One appreciates this opportunity to comment on the Agencies' CRA Questions and Answers. Should you have any questions, please call Dorothy Broadman, Managing Vice President, Corporate Citizenship, at 703-720-2368, or me at 703-720-2255.

Sincerely,

Christopher T. Curtis

Christopher T. Curtis
Associate General Counsel
Policy Affairs