CONSUMER BANKERS ASSOCIATION
The Voice of the Retail Banking Industry

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
Regs.comments@occ.treas.gov

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
Regs.comments@federalreserve.gov

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

Dear sir or madam:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the proposal by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the Federal Deposit Insurance Corporation (FDIC) (Collectively, the Agencies) to clarify their Interagency Questions and Answers (Q&A) regarding the Community Reinvestment Act (CRA). CBA has been actively engaged in CRA and CRA-related activities since its enactment, and is a strong supporter of community development activities by financial institutions and others.

CBA submitted comments and testified at the hearings held in 2010, and we are grateful that some of our issues have led to these proposed Q&A revisions. We believe that several of the proposed changes are beneficial and will be a step in the right direction, and we are appreciative

[1] The Consumer Bankers Association is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

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of the thoughtful way the Agencies have addressed these difficult issues. We have some specific comments addressing some of the Q&A, as set forth below.

In short, our views on the major proposed changes, in priority order, are:

- **Community Development Lending in the Lending Test Applicable to Large Institutions (**Q&A sec. __.22(b)(4)-2)
  CBA strongly opposes this proposed revision to the Q&A. It would be an unprecedented expansion of CRA requirements with significant negative consequences. It would increase burdens on institutions, exacerbate an already unstable market for CD loans, and ultimately harm the markets CRA is intended to benefit.

- **Community Development Activities Outside an Institution's Assessment Area(s) in Broader Statewide or Regional Area That Includes the Institution's Assessment Area(s) (**Q&A secs. __.12(h)-6 and __.12(h)-7)
  CBA recommends the elimination of the proposed phrase "to the detriment of." We also recommend that the proposed phrase "in lieu of" be further clarified, or alternatively, that it be entirely replaced by a bright line test triggered by a current overall CRA rating of Satisfactory or better.

- **Investment in Nationwide Funds (**Q&A sec.__.23(a)-2)
  CBA believes the proposed changes are not beneficial and would not reduce burdens or disincentives to investing in nationwide funds. A better long term solution would be to permit an institution to receive full consideration in nationwide funds, so long as they include the bank's assessment area(s) in their prospectus. In any case, we recommend continuing to allow institutions, <u>at their option</u>, to allocate the investment in nationwide funds by any reasonable method, including the permissible use of side letters.

- **Community Services Targeted to Low- or Moderate-Income Individuals (**Q&A sec. __.12(g)(2)-1)
  CBA strongly supports the proposed treatment of these proxies, and we commend the Agencies for taking this reasonable and justifiable approach to CRA.

- **Service on the Board of Directors of an Organization Engaged in Community Development Activities (**Q&A sec.__.12(i)-3)
  CBA strongly supports this clarification and commends the Agencies for making it clear that the service by financial institution personnel on the board of a community development organization should always receive positive consideration as a community development service.

<u>Detailed comments on the Proposal, in priority order, follow:</u>

I. Community Development Lending in the Lending Test Applicable to Large Institutions

To address concerns about insufficient weight being accorded to community development activities, the Agencies propose a new Q&A sec. __.22(b)(4)-2 to clarify that community development lending performance is always a factor considered in an institution's lending test rating.

Community development lending has always been one of the five performance criteria in the large financial institution lending test, but, as the Agencies note, they have not been consistent in how community development lending has been regarded. Generally speaking, the OCC has treated it only as a positive or neutral factor, as reflected in the 2000 Large Bank CRA Examiner Guidance. As stated in the Proposal, the FDIC and FRB have always considered it, for its positive, neutral, or negative impact on the lending test rating.

In order to bring these views into conformity, the revised Q&A would state that community development lending may have a positive, neutral or negative impact on the institution's rating. The proposal states, in pertinent part:

> For example, in some cases community development lending could have either a neutral or negative impact when the volume and number of community development loans are not adequate, depending on the performance context, while in other cases, it would have a positive impact when the institution is a leader in community development lending. Additionally, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

CBA Comments:

CBA strongly opposes this proposed revision to the Q&A. It would be an unprecedented expansion of CRA requirements with significant negative consequences. It would increase burdens on institutions, exacerbate an already unstable market for CD loans, and ultimately harm the markets CRA is intended to benefit.

We have always supported enhanced consideration of CD lending and we believe CD activities do not get the amount of consideration they should. CD efforts in support of affordable housing, job creation and retention, other community needs such as affordable health and child care, and revitalization or stabilization of LMI areas or distressed or underserved rural middle-income communities, should always be given strong positive consideration due to the high level of impact and significant qualitative characteristics. These are beneficial activities that should be encouraged by CRA. In our comments during the hearings, we emphasized this, and we were among those mentioned by the Agencies who argued that CD lending should receive greater consideration. We stated that the weighting methodology particularly undervalues CD lending, since it places so much weight on what can be quantified more easily (e.g. mortgages). (CD services get inadequate weight as well, since branch distribution takes a disproportionate share of the Service Test.) However, we explicitly stated that CD loans should only be a positive, and the absence of CD lending should not be a negative, as it would be in this proposal.

CRA does not mandate mortgage lending or small business lending. Instead, it allows institutions to meet their community needs by relying on their own business model, expertise and capacity. There are no actual volume requirements; but instead banks are evaluated on distribution. If adopted, the proposal would make CD lending unique in imposing a volume expectation. Not all institutions have the strategic focus or the capacity to conduct meaningful CD lending in every assessment area, but the regulation would force them all to become CD lenders. The result would be that banks without the expertise or infrastructure to engage in CD lending would be forced into a complex line of business, and the impact will be harmful to the banks and the communities they serve.

The Proposal states that examiners will evaluate CD lending in the context of an institution's business model, the needs of its community, and the availability of CD opportunities—in other words, that "performance context" is expected to mitigate the expectation that banks will be required to make CD loans in all their assessment areas. We do not believe this will be sufficient to avoid negative consequences. Community needs and availability of CD opportunities are too subjective to be a reliable consideration, and are subject to second guessing.

The practical considerations also argue against this proposal. For both home mortgage and small business/small farms analyses, banks have census demographic benchmarks as well as peer data which they are able to use to evaluate their own performance and set goals as necessary. The determination of whether a bank had an adequate amount of CD lending, however, would be extremely difficult to assess. The result would be an inordinately subjective measure of adequacy, as there are no reasonable demographic benchmarks to provide guidance for "how much is enough." And even if assessment-area-level peer data were available for CD lending, it would be of limited value. Because opportunities for CD lending don't happen every year in every community and individual loans amounts can vary widely, it would be difficult to benchmark performance against peers. For example, an institution might have the opportunity to make a $20 million construction loan in one year and have no similar opportunity for years to come.

More importantly, creating a new mandate for CD lending by raising expectations would be counter-productive to the interests of LMI and underserved communities and the Act itself by promoting an unsustainable lending and investing environment that runs contrary to safety and soundness. If banks—particularly larger banks—believe they must make community development loans within each assessment area or at some higher and undefined level to avoid a "negative impact" rating on the lending test, banks will vie for the same limited number of transactions within their assessment areas. Competition would be artificially driven to an unhealthy (and unsustainable) level.

CD lending is already a somewhat irrational marketplace caused by existing CRA expectations on banks, and the proposed revisions will only exacerbate the problem. With limited opportunities in many geographies, Low Income Housing Tax Credits (LIHTC) developments have become one of only a few widely available CD opportunities with strong qualitative characteristics and high impact to the community. Due to high volume expectations for Outstanding CRA ratings, banks impute a CRA value into the pricing of LIHTC investments. This often results in unattractive pricing that deters non-banks, who do not reap the CRA value, from investing.

We saw during the recent recession the instability created by such lack of investor diversification. When Fannie Mae, Freddie Mac, and several large banks withdrew from the investment market because they couldn't use the tax credits/benefits, the industry collapsed. The public sector was forced to step in to fill some of the gaps, but many affordable housing developments could not be built due to the extreme reduction in investment dollars. For example, the amount of annual LIHTC investment declined from $8.4 billion in 2007 to $4.5 billion in 2009, a 46% decline. During the recession, pricing decreased to a level where non-CRA motivated investors entered the market. Since then, pricing has reversed and they have exited, leaving the industry vulnerable once again.

To compete successfully for the debt business on a property, the lender often has to provide the equity. Thus an increase in competition for lending means an increase in competition for investing. Overly competitive marketplaces often lead to erosion of credit standards and practices which may result in unsuccessful projects. Further, investing in LIHTC's is a complex activity requiring depth of expertise to understand and adequately mitigate the risks. Increasing competition in the LIHTC market through expanded CD lending requirements as proposed in this Q&A will therefore only further erode pricing and exacerbate the problems of an already unstable investment market. There needs to be an experienced pool of investors across industries to provide a healthy level of market stability.

Further, since LIHTC (along with New Market Tax Credits and other investments dependent upon government subsidies) are a significant portion of CD lending, the opportunities for banks vary widely year in and year out based on government resources. As those resources have become scarcer in recent years, banks have been more challenged to initiate CD lending. We are concerned that situations like sequestration and other government-imposed budgetary constraints (such as the elimination of redevelopment agencies in California) seriously affect opportunities for lending and will impact financial institutions' ability to perform at historical levels.

Finally, it should be noted that the OCC regulates a disproportionately large portion of CD lending. In principal, we support the goal of uniformity, but it would be preferable to standardize by adopting the approach historically utilized by the agency that regulates the largest part of the CD lending.

In short, we oppose the Agencies' Proposal on CD Lending. The Proposal would put pressure on banks to meet a subjective standard without any guidelines, and it would exacerbate an already unhealthy and unsustainable CD investment market. If a uniform standard is adopted, we recommend the OCC's position, as it takes into account the difficulties and the characteristics of CD lending, while giving CRA consideration to those institutions that have the capability and the skills to participate in this market.

The Agencies asked that we address each of the following questions regarding this proposed Q&A:

- ***Does the proposed Q&A recognize the appropriate value of community development lending, while allowing flexibility based on performance context consideration?*** Heavy reliance on performance context raises concerns. Since examiners are forced to spend a limited amount of time on exams, it is difficult for them to spend sufficient time fully understanding performance context. Further, performance context around CD lending is quite complex, and even long-time CRA professionals can be challenged by it. As a result, CD lending evaluation can be difficult for seasoned examiners, much less those without significant CRA exam experience. Though performance context can be a useful tool, its nature is highly subjective, its application is often inconsistent (meaning banks cannot rely on it to be influential when determining ratings), and the issues surrounding the level of CD lending in each assessment area is much too complicated to ensure banks would have a clear line of sight as to how much CD lending would be sufficient to avoid negative consequences.

- ***Will the proposed Q&A help to promote additional community development lending?*** Nothing in the proposal can actually promote additional lending opportunities. On the contrary, by causing more banks to compete for the same deals, margins will be cut and poorer quality deals will result in order to demonstrate lending in every market. This could run counter to the safety and soundness intent of CRA and result in an unsustainable market for CD lending.

- ***Does this proposed Q&A appropriately clarify the consideration given to community development lending as one of the five performance criteria under the lending test?*** The proposal is not clear because of its reference to performance context when determining if a lack of CD lending has a negative impact on the lending test rating. Given that consideration of the performance context is inconsistent, all institutions will have to assume that CD lending is a requirement. We do not support making CD lending mandatory for the reasons stated earlier. We do not believe it is necessary to treat all five performance criteria under the lending test similarly since the objectives and components of each are very different. It is preferable to retain consistency by continuing with the approach adopted by the OCC so that institutions will be encouraged to make CD loans responsibly and sustainably.

II. Community Development Activities Outside an Institution's Assessment Area(s) in Broader Statewide or Regional Area That Includes the Institution's Assessment Area(s)

The Agencies propose to revise Q&A secs. __.12(h)-6 and __.12(h)-7 to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will be considered in the evaluation of an institution's CRA performance. In place of the phrase "...adequately addressed the community development needs of its assessment area(s)," the proposal would state that such community development activities "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 area(s)." It will also state that examiners "will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance." The Agencies also propose to modify the current description of what is meant by the term "regional area" for additional clarity and flexibility.

CBA Comments:

We support the Agencies' efforts to clarify this language. However, we urge the elimination of the proposed phrase "to the detriment of." We also recommend that the proposed phrase "in lieu of" be further clarified, or alternatively, that it be entirely replaced by a bright line test triggered by a current overall CRA rating of Satisfactory or better.

CBA supports the principle of the proposed change, which is to increase the flexibility institutions are given in CRA to undertake CD activity wherever the need is greatest within the bank's assessment area(s) or in the broader statewide or regional area that includes an institution's assessment area(s). Although banks do make CD loans, investments and services outside of their assessment areas, CRA does not provide much incentive to do so currently. The expectation that banks must "adequately address the community development needs of its assessment area(s)" first in order to obtain consideration for CD activities in a broader region has been unclear. What it means to "adequately address" community development needs cannot be determined with enough certainty to encourage institutions to engage in CD activities outside their assessment area(s).

Without greater certainty, institutions will stay within the safety of their assessment areas, rather than being faced with the possibility of limited or no consideration during the evaluation process for CD activities in the broader statewide or regional area. The result can be detrimental to communities. For example, currently, areas of a state or region—such as rural areas—may have needs that are unmet, while institutions continue to lend, invest, or provide services in the parts of the state that constitute their assessment areas. This can create concentrations within some geographies and greater unmet needs in others.[2]

In addition, Low Income Housing Tax Credit (LIHTC) investments frequently make up a huge contribution to a large bank's CRA investment portfolio, but the distribution of LIHTCs are determined by state housing agencies, not the banks. By giving more flexibility to invest in the broader statewide or regional area that includes the bank's assessment areas, banks are free to invest in areas where the state housing agencies have determined the greatest needs exist.

However, the substitution of the expectation that these activities not be "in lieu of or to the detriment of activities in the institution's assessment area(s)" raises problems of its own, since this language can easily be misinterpreted. Any activity outside one's assessment area could arguably be "in lieu of" (i.e. in place of) a similar activity within the assessment area. Once a choice has been made to lend or invest in one geography, it could be viewed as a decision not to lend or invest in another geography. Without more guidance, it could easily become a proxy for the language it replaces, and no institution would know whether it might subsequently be found to have made a loan or investment or provided a service outside of its assessment area "in lieu of" one inside. If the institution must show that it tried to make a loan or investment or provide a service within the assessment area(s) before going outside, it would overly burden the process and effectively eliminate the incentive to make loans or investments or provide services outside the assessment area(s).

"To the detriment of" is even harder to understand in this context. It could be interpreted to include any activity which, by occurring outside the assessment area, harms the assessment area by the mere fact of not being within it. If one LMI community is benefited, does it not comparatively harm a neighboring LMI community? We assume that is not what was intended, but we otherwise do not understand how a CD activity in one geography could be "to the detriment" of another geography. We therefore recommend that "to the detriment of" language be deleted.

We suggest the adoption of one of the following alternatives:

The Agencies should define the phrase "in lieu of" to mean that community development activities should not be <u>exclusively</u> outside the institution's assessment area(s). We assume that is what the phrase was intended to signify. In general, there is a natural incentive for banks to serve the markets where they have a significant presence and where they have a geographic footprint. As such, it would be unlikely they would focus their activities largely outside those markets. Additional examples could also further clarify this approach to demonstrate how examiners would view different scenarios.

[2] At the same time, it is critically important to maintain the connection between CRA activities and a bank's retail branch presence by ensuring that the larger statewide or regional area continues to include the bank's assessment area(s). What makes CRA work is the knowledge a bank has of its local community. That knowledge permits it to assess needs and serve them effectively and safely and soundly. Requiring them to do so in myriad diverse markets where the bank may have only a small presence by virtue of its lending with no "feet of the ground" would inevitably dilute the value of CRA.

Alternatively, the Agencies should adopt a clear standard to benefit institutions that demonstrated their commitment to CRA through their previous performance. Any institution that received a Satisfactory or better overall CRA rating in its previous exam would earn the added flexibility to engage in community development activities in the greater statewide or regional area that includes its assessment area(s). This would give institutions more of a clear guidepost for moving forward, as every institution would know without doubt what activities qualify for consideration, and it would alleviate the current uncertainty. Performance context could be invoked to permit other institutions to engage in community development activities in the greater statewide or regional area, if they demonstrate the need for the flexibility despite the lack of a Satisfactory rating on the previous exam.

Whichever alternative is adopted, it is also important to stress that activities in the broader statewide or regional area that includes the assessment area(s) should not be discounted by virtue of being outside the assessment area(s). They would be treated the same as if they occurred within the bank's assessment area(s). Further, the bank should be permitted to allocate those activities to its assessment area(s) using any reasonable basis (e.g. branch distribution or deposit activity). It is important to note that banks will not invest unless they are assured of full credit, both qualitative and quantitative.

CBA Comments in Regard to "Regional Area":

In regard to the proposed revision to the definition of "regional area," CBA believes the proposed definition of "regional area" is sufficiently clear and adequate to address any likely geographic area.

The Agencies asked that we address each of the following questions regarding this proposed Q&A:

- ***Do the revised Q&As clearly convey the Agencies' intent that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?***

  Because as written, it is not clear how an institution could be assured that it would get credit, we have suggested alternatives to make it clearer.

- ***Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?***

  It is necessary to provide "certainty" to banks before decisions about the location of CD activities are made since investment resources are finite due to Part 24. We believe this is the intent of the modifications; however, the vague language could be chilling to an institution. Again, we've made recommendations to improve it.

- ***Does community "community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" raise the same***

uncertainty as "adequately addressed the community development needs of its assessment area(s)"?

The new language also raises uncertainty. We suggest that "to the detriment of" be eliminated and "in lieu of" be clarified as stated above.

III. Investment in Nationwide Funds

To address concerns dealing with investment in nationwide funds, the Agencies propose revising Q&A sec.__.23(a)-2. Because the Agencies believe earmarking, side letters, or pro-rata allocations may be burdensome and a disincentive to investments, the Q&A would no longer suggest that written documentation by the fund demonstrating such allocations may be provided at the institution's option. Further, the Agencies believe the current Q&A places too much focus on quantitative measures tied to the assessment area and do not give sufficient recognition to the broader community development needs of the area or the business model of the institution.

The proposed revision would state the following:

- There may be several ways to demonstrate that an institution's nationwide fund investment meets geographic requirements and that the Agencies will employ flexibility when reviewing information supplied by the institution.
- Information about where a fund's investments are expected to be made or targeted will usually be found in the fund's prospectus, or other documents provided by the fund prior to the institution's investment.
- Investments in nationwide funds may be a suitable investment, particularly for larger financial institutions with a nationwide footprint or business focus, including wholesale or limited purpose institutions.
- Other institutions may also find them beneficial, but should review the fund's investment record to see if it is generally consistent with the institution's goal and geographic considerations.
- Investments in nationwide funds must be performed in a safe and sound manner.
- Investment in nationwide funds may not be conducted in lieu of or to the detriment of activities in the institution's assessment area(s), and examiners will consider performance context in making this determination.

CBA Comments:

CBA believes the proposed changes are not beneficial and would not reduce burdens or disincentives to investing in nationwide funds. A better long term solution would be to permit an institution to receive full consideration in nationwide funds, so long as they include the bank's assessment area(s) in their prospectus. In any case, we recommend continuing to allow institutions, <u>at their option</u>, to allocate the investment in nationwide funds by any reasonable method, including the permissible use of side letters.

CBA believes that investments in nationwide funds can be beneficial both for larger financial institutions with nationwide retail branch footprints and for wholesale or limited purpose banks. They can also prove beneficial for smaller regional banks to help serve the needs of their assessment areas or the greater statewide or regional areas that include their assessment areas. Further, we strongly believe that these investments are beneficial for low- and moderate-income and underserved communities, and such investments should be encouraged to provide an efficient vehicle for financial institutions to meet those needs. In some cases these funds are the only vehicle for getting investments into communities that might not otherwise see them, and if financial institutions face unnecessary obstacles in making such investments, the communities will lose badly needed capital.

We too have wrestled with the issues raised by the proposal, in trying to determine how to best allocate the investments in nationwide funds. In our comments to the Agencies during the CRA Reform hearings, we stated:

> We recommend that full consideration be given for investments in Multi-Investor Funds when they are investing in a larger geographic region that includes the assessment area.
>
> This is but another example of a highly technical rule that has worked to the detriment of CRA's purpose. It has created a disincentive to participate in regional funds that have been enormously beneficial in community development work. The need to get a "side letter" to demonstrate that the funds are being earmarked for the bank's assessment area makes it less likely for banks to want to participate. The funds have suffered as have the communities they serve.

CBA continues to believe that <u>mandatory</u> side-letters can be a detriment. However, the existing Q&A does not require the use of side letters. Instead, it permits their use as one of several options available to the bank. The Q&A states, in pertinent part:

> <u>At the institution's option</u>, written documentation provided by fund managers in connection with the institution's investment indicating that the fund will use its best efforts to invest in a qualifying activity that meets the institution's geographic requirements also may be used for these purposes. Similarly, <u>at the institution's option</u>, information that a fund has explicitly earmarked its projects or investments to its investors and their specific assessment area(s) or broader statewide or regional areas that include the assessment area(s) also may be used for these purposes. … In addition, <u>at the institution's option</u>, an allocation method may be used to permit the institution to claim a pro-rata share of each project of the fund. CRA Q&A sec.__.23(a)(2). *Emphasis added.*

By eliminating references to the banks' optional use of side letters, among other reasonable ways to demonstrate how funds will be allocated, the Agencies would actually be creating a greater disincentive to making these investments. Thus, this proposal would be more of a hindrance than a help.

Some institutions have recently had examiners reject side letters entirely notwithstanding the plain language of the Q&A. We believe that Agencies' greater emphasis should not be with the language of the Q&A itself (which permits side letters at the option of the bank) but with the way it is being interpreted and applied by examiners. As noted above, the Q&A provides several approaches which might reasonably be used by the bank to allocate funds, providing the necessary flexibility so long as examiners do not fail to implement them as written.

If the Agencies nevertheless choose to eliminate from the Q&A optional use of earmarking, side letters, or pro-rata allocations, the only other approach that makes sense both practically and conceptually would be to give full consideration to a bank's entire investment in a nationwide fund so long as the prospectus includes one or more of the bank's assessment areas. This would be the easiest approach to administer while still providing an attractive incentive for investing in nationwide funds.

If banks were given full consideration for their investment in nationwide funds in which the prospectus includes one or more of their assessment areas, there would be no risk of "double counting" investments. No investments would be double-counted, because no bank would receive CRA consideration for any investment dollars but its own. If two institutions invest $10 million each, neither can receive more than $10 million credit, and each should be provided with the flexibility to count the full $10 million in one or more of its assessment areas that is represented by the fund, so long as the fund's prospectus includes one or more of the banks' assessment areas. Where a bank elects to take credit should not be a determining factor, as long as it does not take credit for more dollars than it actually invested.

The Agencies asked that we address each of the following questions regarding this proposed Q&A:

- ***Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?***
  The Q&A should assist institutions in meeting the needs of their assessment areas and the greater statewide or regional areas that include their assessment areas. As currently written, the Q&A discourages such activity. However, with the suggestions we have made, such an outcome could be achieved. For retail banks, it is important to maintain the regulatory focus on assessment areas as defined by physical deposit-taking facilities. CBA does not support shifting the focus to locations where a bank provides its products and services, because those lack the physical presence necessary for effective and safe and sound CD activities.

- ***When might nationwide funds be appropriate investments for regional or smaller institutions?***

Given the benefits to underserved communities, regional or smaller institutions should have similar opportunities to receive positive consideration for investments in nationwide funds. To ensure appropriate geographic connection for such investments, we would recommend that some of the areas where the fund plans to invest (on the basis of the prospectus or other fund documents) be within the same broader statewide or regional area as the institution's assessment area(s). And we would recommend those investments be allocated by the institution within its assessment areas on the basis of some reasonable methodology, such as deposits or number of branches.

- ***Some commenters indicated that current methods of "earmarking" investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?***
  If the use of earmarking devices were mandatory, they might be burdensome to the banks. It is our view that so long as they are optional and at the discretion of the bank, they are often the only practical way to allocate funds. If banks do not have the use of these earmarking devices, such as side letters, with the confidence that they will be accepted by the examiners, they will not be as inclined to invest in nationwide funds, and the markets will be harmed.

- ***If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide levels?***
  We would oppose creating a special category for investments in nationwide funds. Exam methodology is already overly complex, and an additional category is unnecessary.

- ***Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?***
  Investments in nationwide funds can be attributed to assessment areas the same way that regional funds can be. The bank can make the allocation to assessment areas within the same broader statewide or regional geography as developments identified in the prospectus by any reasonable means such as distribution of branches, deposits, loans, etc. in the assessment areas. It is important to stress that banks make investment decisions on the basis of where the fund plans to invest, and banks cannot be expected to know at the time of their investment where all the dollars in the fund will eventually be deployed. We support the retention of the optional use of side letters or other earmarking devices as a means of allocation in case the proposed Q&A revisions are not effective in providing banks the assurance that the entire investment in a nationwide fund containing the bank's assessment area(s) will be given full consideration.

- ***If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different institution's evaluations?***

No investments would be double-counted, because nobody would receive CRA consideration for any investment dollars but their own. If two institutions invest $10 million each, neither can receive more than $10 million credit, and each should be provided with the flexibility to count the full $10 million in one or more of its assessment areas that is represented by the fund.

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

The Agencies propose to revise Q&A sec. __.12(g)(2)-1 to add that, if a community service is provided to students or their families from a school where the majority of students qualify for free or reduced-price meals under the USDA's National School Lunch Program, the community service would be deemed to be provided to low- or moderate-income individuals.

The Agencies also propose to revise the section to add targeting of a community service to individuals who receive or are eligible to receive Medicaid as another example of how a financial institution could determine that community services are targeted to low- or moderate-income persons.

CBA Comments:

We strongly support the proposed clarifications, and we commend the Agencies for taking this reasonable and justifiable approach to CRA.

As we stated in our comments to the Agencies during the hearings, the benefits of using proxies of this kind should override any technical objections. The current overly technical reading of the regulation has led to poorer areas not getting the community service support they needed. By making these changes, the Agencies have moved the regulation closer to its intended purpose and elevated substance over form.

We also wish to note that these proxies are not limited in their application to community services, but apply equally to qualifying loans and investments, where appropriate. As such, the language should be reiterated in the other appropriate sections of the Q&A.

We also wish to point out that the language of the Medicaid proxy should say "primarily" targeted to individuals who receive or are eligible to receive Medicaid, so that the proxy would align with all other qualification guidance and not require that every individual be eligible for Medicaid.

The Agencies asked that we address each of the following questions regarding this proposed Q&A:

- ***Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate income?***

We believe these are effective proxies, if modified as suggested above, for the CRA measure of low- or moderate-income income individuals.

- ***Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?***
  We support the use of proxies wherever possible to reduce unnecessary burdens on financial institutions and promote the provision of important services to LMI and underserved communities.

- ***Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A?***
  When the federal government adopts a program designed to assist lower income people, the exact measure of lower income is rarely identical to CRA. This should not become a barrier to the application of CRA, if it can be a way banks can provide assistance by lending, investment or services. All government programs designed to serve lower income households and individuals should be considered valid proxies. Examples include, but are not limited to, Pell grants, Supplemental Nutrition Assistance Program, project-based Section 8, Section 8 vouchers, Supplemental Security Income, Earned-Income Tax Credits, and Title I Schools. We would also advocate the inclusion of any proxies the institution has identified and well documented as reasonably related to the purposes and objectives of CRA.

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

The Agencies propose to modify Q&A sec.__.12(i)-3 to include service on the board of directors as an explicit example of a technical assistance activity that can be provided to community development organizations and that would receive consideration as a community development service.

CBA Comments:

CBA strongly supports this clarification and commends the Agencies for making it clear that the service by financial institution personnel on the board of a community development organization should always receive consideration as a community development service.

Anyone serving on a board of directors has the highest responsibility for the financial well-being of that organization. One of the principal responsibilities of board members is to maintain financial accountability of their organization. Board members are trustees of the organization's assets and are required to exercise due diligence to ensure that the organization is well-managed and that its financial situation remains sound. Therefore it has been illogical and counter to the intent of the CRA to limit consideration for community development services to those who serve on loan review committees or otherwise provide specialized financial services. This has been an ongoing concern for financial institutions, and returning to the long-held treatment of positive consideration will once again appropriately encourage active participation in community development.

VI. The Agencies request comment on whether any other activities should be included in this Q&A.

Consideration of Technical Assistance Provided to Small Businesses. It should be unnecessary for banks to document the size of small businesses when providing technical assistance. Any steps that could simplify the process would reduce a burden to the banks and help to encourage technical assistance to small businesses at a time when they are most in need of support. Since the vast majority of businesses seeking such technical assistance—such as financial management, business plans and cash flow management—are small businesses (most are actually micro-businesses), it should be unnecessary to require the bank to ask them for revenue and employee information in order to meet the technical requirements necessary to document their small business status for CRA purposes. We recommend the Agencies state that any technical assistance to businesses is presumed to be qualified, unless there is clear evidence that the services are to larger commercial entities.

Conclusion

CBA appreciates the opportunity to comment on the proposal to amend the CRA Q&A. We would be happy to meet with you to follow up on any of our comments or on any other issues.

Sincerely,

Steven I. Zeisel
Executive Vice President &
General Counsel