National Association of Industrial Bankers

NAIB

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May 17, 2013

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

Re: Interagency Questions and Answers Regarding Community Reinvestment
Submitted to comments@FDIC.gov

Dear Mr. Feldman:

The National Association of Industrial Bankers (NAIB) [1] appreciates the opportunity to comment the proposed revisions to Interagency Questions and Answers Regarding Community Reinvestment (CRA Q&A).

Statement of Interest

NAIB is the national association representing industrial banks. While our comments focus on the impact on industrial banks, their parent companies and their customers; we share the common concerns of financial institutions of all types. Unlike other types of bank charters, industrial banks may be owned by non-financial companies. Additionally, industrial banks typically serve specific customer groups and markets nationwide instead of specific geographic areas.

Because most NAIB member banks have better access to capital through diversified parent companies, they are the best capitalized, most profitable class of banks and have been so for many years. Our member banks are engaged in all manner of lending, from small-dollar consumer loans to large commercial loans. As of December 31, 2012, industrial banks had combined assets of $159.8 billion and capital of $23.8 billion. Given the unique structure of industrial banks, our members have a keen interest in the policy issues dealing with the Community Reinvestment Act (CRA), as evidenced by the NAIB August 2010 comment letter in response to the Agencies' questions regarding CRA (a copy of which is attached hereto). This document represents a consensus of the views of our members.

Industrial banks have always considered CRA an important program and take their duties and responsibilities under the law seriously. During the last 10 years alone, industrial banks have originated more than $7 billion in community development loans and investments, and have been

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[1] First chartered in 1910, industrial banks operate under a number of titles; industrial loan banks, industrial loan corporations, or thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but do accept time deposits, savings deposit money market accounts and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including some of the most underserved segments of the US economy. Our members are chartered in California, Nevada and Utah.

involved in many innovative and industry-leading transactions. However, the non-traditional structure of industrial banks has presented continuing challenges in regard to CRA. Most industrial banks operate from a single main office, offer products and services nationwide, gather deposits nationwide, do not have retail branches, and have one CRA assessment area adjacent to the main office.

Most if not all industrial banks make the majority of their loans outside the bank's assessment area. This imposes obvious limitations on using a lending test for an industrial bank so traditionally industrial banks have relied on community development loans and investments to fulfill their CRA responsibilities. For that reason, industrial banks have more experience in community development lending and investing than many other banks and are especially concerned about the proposed changes to the standards for community development loans and investments.

In light of these non-traditional characteristics, many industrial banks have sought and received designation as "wholesale" or "limited purpose" banks for purposes of CRA (which allows them to be evaluated under the "Community Development" test), and several industrial banks operate under approved CRA Strategic Plans that focus primarily on community development loans, investments and services. Regardless of which CRA test industrial banks are evaluated under, industrial banks have historically fulfilled their CRA requirements mostly through community development loans, investments and services. Thus, the CRA regulations and CRA Q&A regarding community development are of critical importance to industrial banks.

The NAIB applauds the Agencies' efforts to provide more clarity and flexibility regarding community development activities, and believes that several of the proposals are positive in that regard. The NAIB also strongly supports the goals of increasing community development loans and investments and of assisting institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services. The NAIB believes that to fully accomplish those goals it will likely be necessary to revise portions of the CRA regulations and additional CRA Q&As (discussed in more detail below), especially those dealing with community development lending (which currently result in community development loans being valued less than community development investments) and geographic constraints on community development activities.

Response to Proposed Revisions and Specific Questions from the Agencies

I. Proposed Revisions to Existing Q&As

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

1. Proposed Revisions to Q&A § __.12(h) – 6 and § __.12(h) –7

a. "*Adequately addressed the community development needs of its assessment area*": Both Q&A §__.12(h) – 6 and Q&A 12(h) –**7** serve as interpretive guidance for the CRA regulation's definition of "community development loan," which is defined in part as a loan that "[b]enefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s)." 12 C.F.R. §__.12(h). The current text of both Q&As clarify that an institution can receive CRA credit for community development activities that do not benefit the institution's assessment area if two requirements are met: (1) the institution has "adequately addressed the community development needs of its assessment area," and (2) the activities "benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area." The proposed revisions would delete that provision from Q&A § __.12(h) – 7 completely and, in Q&A § __.12(h) – 6, would replace the phrase "adequately addressed the community development needs of its assessment area" with the following requirements:

1. such community development activity must be performed in a safe and sound manner
2. consistent with the institution's capacity to oversee those activities, and
3. may not be conducted
    a. in lieu of, or
    b. to the detriment of,

   activities in the institution's assessment area.

The revised Q&A § __.12(h) – 6 would further provide that "[w]hen evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area, 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."

NAIB agrees that more guidance regarding the phrase "adequately addressed the community development needs of its assessment area" would be helpful. However, the proposed revisions seem to impose additional requirements in areas that are more properly addressed by a bank's safety & soundness examiners and contain significant ambiguities, which could actually disincent a bank from making loans or investments outside of its assessment area. For example,

- who determines what is "safe and sound"? Would a bank have to affirmatively prove it as part of establishing CRA eligibility? Compliance examiners do not normally evaluate CRA assets for safety and soundness. Will CRA assets now be examined twice? Would a CRA examiner's concerns about the safety and soundness of a community development loan or investment potentially disqualify that loan or investment for CRA purposes even if it were otherwise compliant with all other CRA qualifications? Would a bank's safety and soundness examiners need to have already evaluated a certain loan/investment to confirm it is safe and sound before the CRA examiner could give it credit in a bank's CRA examination?

- who determines if a bank has the capacity to oversee? Would a bank have to affirmatively prove it as part of establishing CRA eligibility? Can a CRA examiner refuse to give CRA credit for a loan/investment if the CRA examiner questions a bank's ability to oversee it? What if a CRA examiner and the bank's safety and soundness don't agree about a bank's capacity?

NAIB members believe issues relating to safety and soundness and capacity to monitor loans or investments outside the bank's assessment area should be evaluated in a bank's safety and soundness exam and should not be made a part of a CRA Q&A or a CRA examination. In addition, the phrase "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area" could be interpreted to be a much stricter standard than the current standard of "adequately addressing the community development needs" in a bank's assessment area. For example, it could be argued that anything a bank does outside of its assessment area is technically "in lieu of" or to the "detriment" of activities inside the assessment area because those resources "could" or "should" have been deployed inside the assessment area.

An additional source of potential confusion and ambiguity is the fact that the phrase "adequately addressed the needs in its assessment area" appears in several other places in CRA regulation and CRA Q&As,[2] none of which are being proposed for revision. These inconsistencies could lead to ambiguity and confusion. NAIB favors dealing with all instances of that phrase in a consistent manner.

For all the reasons discussed above, NAIB believes that the proposed replacement for the phrase "adequately addressed the needs in its assessment area" should not be adopted.

b. "*Retail" institution*: Regarding both the current and proposed revision to Q&A § __.12(h) – 6, the NAIB notes that, in the first sentence in the second paragraph, the phrase "retail institution " is problematic because it is based upon the assumption that all banks that are not "wholesale" or "limited purpose" must by default be "retail" institutions. However, there are many NAIB member banks that could not be considered a "retail" bank, but yet for some reason or other may not technically meet the current regulatory definition of a "wholesale" or "limited purpose" bank. Accordingly, the word retail should be stricken and should be revised to read: "In addition, an institution that has not received a wholesale or limited bank designation will receive consideration for certain other community development activities."

c. "*Regional area*": NAIB welcomes the Agencies efforts to add clarity and flexibility to the definition of a "regional area" with the new proposed language. NAIB recommends the last part of the paragraph be amended to read: "Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative. <u>Regions can also be defined by where an institution otherwise provides products and services, consistent with the bank's performance context."</u>

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[2] These other instances include the following: (1) 12 C.F.R. § __.25(e)(2) (part of the "Community Development" test for banks with wholesale or limited purpose designations, and that provides CRA credit for community development loans, investments, and services that benefit areas outside the bank's assessment area if the bank has adequately addressed the needs of its assessment area)); (2) Q&A § __.22(b) (2) & (3) – 4 (provides interpretive guidance for the "geographic distribution" section of the lending test, and which confirms that that a bank will receive CRA credit for loans to low- and moderate-income persons and small businesses and farm loans outside of an institution's assessment area provided the institution has adequately addressed the needs of borrowers within its assessment area); and (3) Q&A § __.25(e) – 1 (provides interpretive guidance for the "benefit outside of assessment area" portion of the "Community Development" test, and confirms that if examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to community development loans, investments and services by that institution nationwide).

NAIB believes this change would enhance an institution's ability to conduct, and receive credit for, community development activity that is outside the FDIC's traditional interpretation that a 'broader regional area' can only include states contiguous with the state where the bank is located. In areas of the country where the population is relatively sparse despite a very large geographical area, banks should be allowed the flexibility to designate a much larger "regional area." For example, in the East or Northeast areas of the country, it may only take one or two states to combine for a population of 20 million, whereas in certain Western and Southwestern states it may take a combination of eight to ten states to equal a population of 20 million people. Because many institutions conduct business nationwide, NAIB believes it is consistent with the intent of CRA that banks could also receive credit for activities beyond the states contiguous to the state where the bank is located, consistent with its performance context.

In this regard it should be noted that many industrial banks and their parents and affiliates have a substantial presence in other areas of the country that do not involve branches. For example, many processing and service centers operate in other states. These contacts may be more meaningful and substantive for CRA purposes than those in states adjacent to the banks' primary assessment areas. NAIB members believe it makes sense to factor these contacts into consideration of extended assessment areas where a bank can receive CRA credit.

2. <u>Responses to Agency Questions Regarding Q&A § __.12(h) – 6 and § __12.(h) –7</u>

• 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?

The Agencies' intent is clear, though banks will still face uncertainty as to the exact boundaries of this "wider statewide or regional area," or may feel restricted by an examiner who determines that the "wider statewide or regional area" is much smaller than the Bank submits. NAIB recommends that the Q & A could be further clarified by stating that qualitative consideration will not be lessened if the direct benefit to the assessment area is unclear, as long as impact can be demonstrated for the activity as a whole. Examiners should be trained to interpret the "regional area" liberally as opposed to narrowly, and in a manner that is flexible and consistent with a bank's performance context.

• 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?

The clarification may help expand programs. NAIB believes a better way to provide such incentive would be to allow a bank to receive credit for community development activities <u>anywhere</u> outside a bank's assessment area as long as the bank "has adequately met the community development needs of its assessment area(s)." Further, just as in Q&A§__.25(e) -1, in determining whether an institution has adequately addressed the needs of its assessment area(s), the examiner would consider community development activities that benefit a broader statewide or regional area that includes the institution's assessment area. This would require revision to a handful of CRA regulations and a larger number of CRA Q&As. Simplifying a *bank's community development activities into two clear categories (within assessment area and outside assessment area) would greatly increase a bank's opportunities and willingness to engage in community development activities outside its designated assessment area(s), while at the same time maintaining a primary focus on an institution's assessment area. It would also allow community development loans (and investments and services) to be treated at least as favorably as loans to low- and moderate income individuals and small business and farm loans, all of which can be located anywhere outside a bank's assessment area without being restricted to "a broader statewide or regional area that includes an institution's assessment area."* [3]

• Does "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)"? If so, how can the Agencies better describe the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?

•For all the reasons discussed in detail above, NAIB believes the proposed revisions may actually raise more uncertainty than the current standard of "adequately addressed the community development needs of its assessment area." At present, NAIB cannot articulate a way to better describe "the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment areas" to engage in community development activities outside the assessment area. However, NAIB is committed to working with the Agencies on the issue, and will continue to analyze potential alternatives (and will supplement this letter as appropriate).

•Does removal of the portion of current Q&A § __.12(h) – 7 that discussed a diffuse potential benefit to an institution's assessment area(s) alleviate the confusion between the two Q&As and help to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

Yes, but NAIB recommends that the Q&A could be further clarified that qualitative consideration will not be lessened if direct benefit to the assessment area is unclear, as long as impact can be demonstrated for the activity as a whole.

• Is the proposed definition of "regional area" sufficiently clear and appropriately flexible?

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[3] Q&A §__.22(b) (2) & (3) – 4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?* A4. Consideration will be given for loans to low and moderate-income persons and small businesses and farm loans outside of an institution's assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluate under the lending test, but also to loans made by small and intermediate small institutions being evaluated under their respective performance standards.

NAIB believes the definition should explicitly include all institutions, and allow institutions the flexibility to define the larger regional area, consistent with their resources and performance context, as outlined above.

B. Investment in Nationwide Funds

1. Proposed Revisions to Q&A § __.23(a)-2

NAIB recommends amending the proposed language.. First, in the third paragraph, second sentence, NAIB recommends the following additional language: Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions and other institutions evaluated primarily on community development activities or with nationwide lending or deposit-taking activity that is outside the defined assessment area(s)..

This would explicitly include institutions with Strategic Plans that focus on community development, as well as other institutions evaluated under large bank or other guidelines, for which the evaluation of community development activity is given most weight in the overall performance evaluation.

NAIB also recommends, for the reasons stated above in relation to the proposed revisions to Q&A §__.12(h) – 6 and Q&A 12(h) –7, deleting the following text in its entirety: Any investment in a nationwide fund must be performed in a safe and sound manner, consistent with an 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). When evaluating whether community development considering whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), 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."

2. Responses to Agency Questions Regarding Q&A § __.23(a)-2

• 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 proposed revisions would not help nationwide lending or investing. The proposed revisions still contain the geographic restriction of "a wider statewide or regional area," which, under current FDIC interpretation for industrial banks is limited to the state where the bank is based and all contiguous states. The best way to assist institutions that deliver products on a nationwide basis to address community needs in area where they provide products and services would be to allow credit for a community development loan or investment located anywhere in the country as long as the bank had "adequately addressed the community development needs in its assessment area(s)." (Further, in determining whether an institution has adequately addressed the needs of its assessment area(s), the examiner would consider community development activities that benefit a broader statewide or regional area that includes the *institution's assessment area.) In the alternative, the types of institutions eligible for evaluation under the "Community Development" test should be expanded beyond just "wholesale" and "limited purpose" banks to include banks that do business primarily through telephone, mail and the Internet, and do not have traditional retail branches.*

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

This issue would become moot if, as suggested by NAIB herein and by many other commenters in 2010, consideration were given to community development activities located anywhere in the country as long as the institution had "adequately met the community development needs in its assessment area."

• 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?

NAIB does not believe that "earmarking" is always burdensome, but acknowledges that it does create some extra costs of compliance by funds and investing institutions that could be better deployed into community development activities. However, counting only new investments from year to year, and not granting consideration for previous investment activity (an approach recently taken by FDIC in the context of CRA Strategic Plans, which is inconsistent with the treatment currently granted by other agencies) would go counter to the earmarking approach, as earmarking would be the primary way of accounting for new activity within a fund (i.e, pay-down of an existing project whose proceeds were reinvested into new projects) to be counted, since the overall dollar investment could remain the same. Thus earmarking or some other methodology may be required under current FDIC interpretations.

• 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?

NAIB believes that the proposed revisions should not be adopted as presented (see above comments). In any event, investments in nationwide funds should be counted the same as any other community development investment and not carved out as a separate category.

• 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?

NAIB believes that fund investment activity and footprint can be tracked to demonstrate activity within a particular state or 'larger regional area which includes the assessment area," although this point may not be as relevant if, as suggested herein, consideration is given for investments anywhere outside an institution's assessment area if the institution has "adequately addressed the community development needs in its assessment area."

• 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 institutions' evaluations?

This should not be a factor considered, particularly when used by an institution whose products and services are offered nationwide, but whose assessment area (as defined by the location of brick-and-mortar branches and deposit-taking RSFs) may preclude automatic consideration for such activity. In granting the flexibility to engage in activities beyond the traditional assessment area when products and services are offered nation-wide, the need to earmark funds or attribute investments to a particular assessment area becomes less necessary or useful.

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

1. Proposed Revisions to Q&A § __.12(g)(2) – 1

NAIB supports the proposed revisions as presented, and believes the proposed changes provide additional clarity and would result in a reduction of regulatory burden.

2. Responses to Agency Questions Regarding Q&A § __.12(g)(2) – 1

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

Yes, this codifies existing practice of several regulatory agencies and is a useful proxy.

• 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?

Yes, allowing the use of these proxies reduces burden, freeing up resources to providing community development services.

• Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A?

No additional comments.

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

1. Proposed Revisions to Q&A § __.12(i) – 3

NAIB believes the proposed revisions are positive in a number of ways but recommends the following changes to the bullet pointed examples:

• Providing technical assistance ~~on financial matters~~ and similar expertise to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;

• Providing technical assistance ~~on financial matters~~ and similar expertise to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;

Examples of technical assistance activities that might be provided to community development organizations include:

• Furnishing financial services training or other technical expertise or services for staff and management, consistent with the institution's focus, resources, or specialties;

This language is meant to provide flexibility to provide the technical expertise that many non-profits can benefit from, but may not be predominantly financial in nature, but is still using the technical expertise and abilities of the financial institution and its resources. Such real-life examples have included: engagement of six sigma methodologies to streamline a non-profit's operations and obtain efficiency, making them more efficient in meeting their organizational objectives; IT resources to develop databases or similar technological improvements to enable the non-profit to better serve its purpose; management consulting services, etc. These are all examples of services that leverage the unique expertise of the financial institution in innovatively and flexibly meeting the unique needs of the non-profits they serve, and are in the best spirit of the CRA regulations but which, depending on the examiner, may not be deemed to be 'primarily financial' in nature.

II. Proposed New Questions and Answers

A. Qualified Investments

1. Proposed new Q&A § __.12(t) – 9

No comments or proposed changes.

2. Responses to Agency Questions Regarding New Q&A § __.12(t) – 9

• Is the proposed new Q&A sufficiently clear?

Yes.

• Will the proposed Q&A encourage or discourage investments or loans in organizations with a community development mission?

No additional comments.

• Does the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect, or through the provision of capital

investments, in connection with an organization with a primary purpose of community development?

NAIB believes that the proposed Q&A provides sufficient clarity and flexibility to encourage community development activities, while at the same time accurately capturing the quantitative impact of such activities.

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

1. Proposed New Q&A § __.22(b)(4) – 2

NAIB recommends the following proposed changes: In the last sentence of paragraph, add the following language:

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, including when the institution's specific performance context is such that community development lending is the only type of lending that would be considered in the overall lending test evaluation.

This language is meant to give increased flexibility to institutions who may not be under a Strategic Plan, but who may also not qualify for a limited purpose or a wholesale designation. Examiners in the past have demonstrated this flexibility (i.e., a large bank without a specific designation, but whose CRA rating is based almost exclusively on community development activity), but the recent FDIC guidance that 'if you fail under your Strategic Plan and want to be evaluated under the community development test, you need to have a wholesale or limited purpose designation in place' puts this flexibility at risk. This new language would lessen the potential downside impact of that new guidance.

Banks have also not traditionally been able to count community development lending, if such lending was already included in CRA data reporting considered elsewhere in the performance evaluation. While the banks and the regulators want to avoid double counting of activity, community development lending often has unique, innovative, and complex characteristics which take additional resources and commitment in order to meet community needs, which are not able to be highlighted or given quantitative (and often times qualitative) consideration because they also happened to be reported under small business or small farm lending. Allowing institutions to carve out these loans from other reporting obligations under CRA to highlight their responsiveness to community needs or other innovative or complex characteristics would encourage more loans which may meet multiple criteria (i.e., a small business loan whose primary purpose is community development).

2. Responses to Agency Questions Regarding New Q&A § __.22(b)(4) – 2

• Does the proposed Q&A recognize the appropriate value of community development lending, while allowing flexibility based on performance context consideration?

Additional flexibility on the consideration of performance context would be useful, as noted above. More importantly, NAIB believes that in order to give community development loans the appropriate value, it is critical that consideration be given to outstanding balances on loans made in a previous year, and not just as a part of "other loan data" that a bank may choose to provide. For all CRA evaluation methods, NAIB strongly encourages revising the CRA regulations and CRA Q&Q to provide for consideration of loans originated in previous periods and for which there is a balance outstanding. For a number of reasons, including fierce competition for the relatively few community development loan opportunities in the Salt Lake area, for example, (or even the whole state of Utah), many NAIB member banks have significantly lower amounts of community development loans as opposed to investments. Revising the regulations to clearly give consideration for outstanding balances on previous period loans would help give industrial banks more incentive to pursue community development loans.

The current restrictions on counting outstanding balances on prior period loans also effectively limits or eliminates certain kinds of otherwise qualified CRA loans, or requires awkward loan terms to fit into a limited time context. NAIB members understand the importance of maintaining active CRA programs at all times. Our members would prefer the option to make some longer term loans when that is the most efficient and cost effective way to address an existing need.

In addition, a provision already exists for giving credit for prior period investments: Q&A §__.12(t) – 8 clearly provides that banks will receive consideration for investments made in a prior year for which there is still an outstanding balance. There is no policy justification for valuing community development loans as less important on an ongoing basis than community development investments, including CRA-eligible debt investments such as mortgage-backed securities or municipal bonds. Originating a community development loan can be very labor-intensive and time-consuming, sometimes taking many months to get approved and closed. A secondary market has not developed into which banks can readily sell its community development loans[4] since they often employ innovative and complex features to proactively address community needs, but which would usually preclude securitization or other secondary market activities. Giving consideration only to new originations (or renewals) also results in bank's having less incentive to make community development loans for terms longer than one or two years, even though there may be a great need for longer-term loans. For all these reasons, NAIB strongly urges the Agencies to revise the CRA regulations and CRA Q&A as discussed above.

• Will this proposed Q&A help to promote additional community development lending?

Again, NAIB believes that the best way to promote additional community development lending is to give credit for loans anywhere outside the assessment area, and to revise the applicable CRA regulations and Q&A to clearly give consideration for outstanding balances on previous period community development loans.

[4] This is in marked contrast to residential mortgage loans, for which there is a well-developed and readily available secondary market. In addition, banks rarely like to keep many 30-year mortgages on their books because of interest rate risk and capital issues. From a policy perspective, community development loans differ significantly from mortgage, and those differences need to be acknowledged in the CRA regulations and Q&A in order for community development loans to be valued appropriately.

Additional flexibility for institutions to carve out community development loans that may also meet the definition of a home mortgage, small business, small farm, or consumer loans from other loans meeting those reporting thresholds under CRA would avoid the double counting issue but give the bank qualitative and quantitative consideration for the additional resources often required to conduct targeted community development 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?

No additional comments.

• Does this proposed Q&A raise any issues that the Agencies will need to address with revised ratings guidance? If so, what are they and how should they be addressed?

Additional flexibility to consideration of performance context for community development lending in institutions not subject to a wholesale or limited purpose definition would need to be clarified in examiner guidance.

III. Redesignation of Existing Question and Answer Without Substantive Change

NAIB proposes that CDFIs be added to the category of financial institutions for which a bank can obtain CRA credit no matter where the institution is located.

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Thank you for the opportunity to comment on these important community development issues. We look forward to working with your agencies. I would be happy to discuss our views in more detail. I may be reached at (801) 355-2821 or frank@fputah.com.

Respectfully Submitted,

Frank Pignanelli
Executive Director