UTAH BANKERS
ASSOCIATION

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November 10, 2014

Office of the Comptroller of the Currency
Mail Stop 9W-11, 400 7th St, SW.
Washington, DC 20219

Re: Docket ID OCC-2014- 0021

VIA EMAIL TO: regs.comments@occ.treas.gov

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW.
Washington, DC 20551

Re: Docket No. OP – 1497

VIA EMAIL TO: regs.comments@federalreserve.gov

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

Re: Request for comments regarding Community Reinvestment Act, Interagency Questions and Answers Regarding Community Reinvestment

VIA EMAIL TO: comments@fdic.gov

Greetings,

This letter responds to your request for comments ("RFC") regarding changes being considered by the OCC, Board and FDIC (the "Agencies") to the Interagency Questions and Answers Regarding Community Reinvestment (the "Q&As"). The request for comments and changes being considered were published in the Federal Register on September 10, 2014.

The Utah Bankers Association is a trade association representing both federal and state chartered banks in the State of Utah. As entities that implement the Community Reinvestment Act and related regulations (cumulatively the "Act"), our member banks have a vital interest in

Immediate Past Chairman	Vice Chairman	Chairman	2nd Vice Chairman	President
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President & CEO	Regional President, Consumer & Small Business	President & CEO	President & CEO	Utah Bankers Association
Lewiston State Bank	KeyBank, N.A.	Optum Bank	Utah Independent Bank	

the guidance provided in the Q&As. We appreciate the opportunity to consider these possible revisions and submit our comments.

At the outset, the UBA commends the Agencies for their efforts to keep the Act and the Q&As updated to reflect changes in the banking industry and the communities our members serve. Today banking is a dynamic industry that is changing in many fundamental ways, particularly in how our members deliver products and services. The Act was originally enacted when most banking services were delivered through physical branches and was designed to apply to that type of operation. In recent years, many new delivery systems have developed to serve customers electronically and over computer systems.

In general, our members support this effort and the changes under consideration. Many new delivery methods and products and services offered by our members benefit low to moderate income people and communities. We believe those new delivery methods and products and services should receive appropriate credit under the Act, particularly when the benefit is integral to the design and goals of those programs. They fall squarely within the spirit of the Act when they facilitate access to credit and banking services by underserved people and communities and we believe they should be given full consideration when evaluating a bank's CRA performance.

We received some specific comments from our members described below. We hope they are helpful in your understanding and evaluation of the specific Q&As to which they relate.

§__.12(g)(3) Activities that promote economic development by financing businesses that meet certain size eligibility standards. .

UBA members support adding further guidance regarding how certain investments may qualify under the "purpose test" set forth in the Q&A. UBA members are especially supportive of adding CDFIs to the list of entities in which an investment will be "presumed" to promote economic development. Members also believe that the other proposed revisions could help banks feel less regulatory uncertainty regarding potential investments in non-SBIC funds.

§__.12(g)(3)–1: *does meeting the "size" eligibility standards mean a financing of a business will be community development*.

Responding to the question "what is meant by job creation for low- or moderate-income individuals", UBA members commented that only giving consideration to jobs that pay wages resulting in an equivalent to low- and moderate-income status somewhat defeats the purpose of job creation, which is to help individuals find opportunities to become more self-sufficient, even to the point of advancing into a middle-income status. Accordingly, UBA supports the additional considerations regarding what demonstrates job creation under the community development and economic development categories. We also suggest that the agencies consider all job creation that can effectively be demonstrated to support low- and moderate-income individuals and neighborhoods, even if those jobs have more than moderate-income pay and attract middle-income individuals as this presents opportunity for additional economic development in a neighborhood and enhances the opportunities for lower wage employees to grow in job opportunities and thus advance according to the goals of the CRA.

§__.12(h)–1: examples of community development loans.

UBA members support permitting loans for renewable energy or energy-efficient equipment to be considered under the CRA, together with the extent such addition of focus creates a more complex or innovative transaction. We believe that such acknowledgement should be considered in the qualitative aspects of the community development loan.

§__.12(g)(4)(iii)–4: revitalizing / stabilizing an underserved nonmetropolitan geography.

Recognizing the increased reliance on mobile technology, including smart phones and tablets that increasingly replace traditional desktop and laptop computers, UBA members support the addition of communications infrastructure to the list of activities that "revitalize or stabilize" an underserved nonmetropolitan middle-income geography, but this is only partially helpful. Increased access to broadband internet is only one component of a new or improved communications infrastructure, and our members believe that over the air mobile services should also be included, even when broadband internet is not available. Rural communities tend to lag behind metropolitan areas where such mobile access is now routinely available, and many customers already conduct banking and other financial business without a broadband internet connection.

§__.21(a)—1: lending activities responsive to the credit needs of the community.

Some UBA members expressed a concern about the reference to small loan programs. In practice, examiners may consider this type of reference a mandate as part of a CRA program and would like additional clarification added stating that such programs are not mandated. The reality is that small loans for short periods inevitably involve high APRs and can be difficult to offer within a bank's underwriting and profit standards. We certainly support giving credit to a bank that can develop a viable program meeting the needs of people who need such loans but would appreciate an express statement that not offering such loans will be viewed as a deficiency in a bank's CRA program.

§__.21(a)–3: how examiners evaluate responsiveness by financial institutions.

UBA members expressed strong support for the addition of this Q&A clarifying the importance of responsiveness to community needs and describing ways that may inform examiners in their evaluation under the performance context of the specific financial institution being examined.

§__.21(a)–4: What is meant by "innovativeness".

UBA members noted that "innovativeness" by itself may not be a requirement for a satisfactory or outstanding rating, and this new Q&A certainly indicates such. However, innovativeness does figure prominently within the Examination Procedures CD Ratings Matrix of characteristics of "investment, loan, and service initiatives" in the evaluation of wholesale and limited purpose institutions under the community development test. In fact, the degree of use of "innovative or complex qualified investments, community development loans, or community development services" does impact the ultimate CRA rating of the financial institution, and while not a sole criteria, is prominently identified and then described as extensive, occasional, rare, or does not use when referencing innovativeness. This presents some continuing confusion as to the intent of the Examination Procedures. UBA members commented that while innovativeness and complexity can, in the right circumstances, enhance lending to low- and moderate-income communities, innovativeness and complexity should not be encouraged for their own sake. Responsiveness and impact are also important qualitative factors of a CRA evaluation and should be weighted appropriately when significant benefits are achieved without the need for innovation or complexity in the program. Additional clarity regarding the consideration of innovativeness versus complexity, or the weighting of both in the resulting rating of the CD test would be helpful.

§__.22(b)(5)–1: what is considered as examiners evaluate innovative & flexible lending.

UBA members support the addition of examples that describe innovative and flexible lending practices.

Some members noted the reference to "alternative credit histories" in this section but were not clear what those are. Any additional explanation would be appreciated.

§__.24(d)–1: availability & effectiveness of systems to deliver retail financial banking services

UBA members generally support the adjustments proposed by the agencies to address the increasing reach of technology and alternate delivery of retail banking services. One additional perspective was suggested to further enhance the recognition of delivery of retail services.

Each financial institution develops a business plan and approach to most effectively reach customers in all of the financial institution's geographies and to enhance access so that customers may more effectively deliver products and services to customers, including low- and moderate-income households and neighborhoods. Specifically inviting financial institutions to include within their "performance context" the financial institution's strategies to deliver financial services to its customers, and then placing appropriate weight to the financial institution's given strategies would more accurately depict the financial institution's efforts to comply with the Community Reinvestment Act.

As an example: physical branch offices are staffed with people during hours most common for the greatest number of customers. Customers that work long hours during the day or experience other difficulties in physically getting to an office (for example due to a disability or mobility associated with age, being a care giver, or other obstacle), may have access to retail banking services limited. With the advances and increase in use of mobile banking technology, a financial institution may form strategies to serve individuals and geographies with multiple access points that individually and collectively actually reach more people at times more convenient for them do retail banking business (24 hours a day, seven days a week). This may increase by many times the delivery of retail banking services than the establishment of a single physical branch could accomplish. By evaluating such an impact and adjusting emphasis (weighting) in evaluating the delivery of retail banking services according to the performance context of the financial institution, the agencies may find and be able to report more effective compliance with the spirit and the letter of the Community Reinvestment Act.

UBA members also supported the comment that CRA does not require a bank to open or maintain unprofitable branches. It would be helpful to expand this theme to make clear that compliance costs are a legitimate consideration when evaluating a bank's CRA program. Some UBA members believe that examiners do not sufficiently consider such costs.

§__.24(d)(3)–1: evaluation of alternative systems to deliver retail financial banking services.

UBA members would also appreciate and support the proposed increased flexibility for evaluation of the delivery of retail financial banking services in this section.

Regarding the availability of data to demonstrate that such services are effective, we suggest a distinction in "available" versus "used." Demonstrating the neighborhoods and communities have the tools to access the services can be accomplished by market studies.

Also, while data demonstrating "use" of the alternate delivery methods may be provided by a financial institution, since financial institutions to not assign to each customer a designation of low- or moderate-income individual or household, demonstrating actual use by income bracket becomes much more subjective if such data is available at all. Accordingly, we recommend emphasis on data demonstrating accessibility augmented by data to demonstrate usage by income bracket of the individual or household to the extent the financial institution has such information.

§__.24(e)–2: quantitative & qualitative factors of CD services.

Member financial institutions support adding the proposed Q&A responses and find they provide more clarity regarding evaluation of community development services.

Recommended additional Q&As.

UBA members believe additional Q&As are needed to bring consistency among the different agencies with regard to recognition of CD loans and qualifying investments from prior periods. Currently, some agencies consider such loans and investments while others do not. Those that do not changed this practice recently without input or prior notice causing some uncertainty for UBA members that had made or were considering such loans and investments. The practical result has been the elimination of CD loans and investments for terms longer than a single examination cycle. UBA does not believe this was the intent or a reasonable condition of the CRA Act and regulations.

UBA members have long requested that community development loans made in prior examination periods that remain on the books and continue to tie up capital be considered part of the CRA efforts when examined. We believe this is consistent with both the letter and spirit of the law. Many valid and beneficial community development projects can take multiple years to form the appropriate coalitions and partners necessary to move forward and require a capital commitment beyond a single CRA examination period. We understand that CRA programs must be continuously active and new loans and investments need to be added in each examination period, but that does not justify ignoring the impact of all longer term loans and many qualified investments regardless of their contributions and responsiveness in meeting community credit needs. Not considering such loans and investments has primarily served as a disincentive for banks to consider longer term loans and investments as part of a CRA program. In our view, that is counterproductive and contrary to the intent of CRA.

We raise this issue because one regulator recently decided to not consider eligible investments from prior exam periods and prior years in its evaluation of an already approved strategic plan. This new practice, while narrow in application, indicates a trend of treating qualified investments similar to how community development loans are treated, and both are a practice that disregards the commitment of capital to meeting community credit needs.

We encourage the agencies to adopt a policy allowing full inclusion of qualified investments (whether current and prior period) provided the bank is otherwise actively engaged in CRA activities and originating new loans and investments. Community development loans from prior exam periods do have a beneficial impact on the community and should be recognized as part of a financial institution's CRA efforts. Your consideration of these factors is most appreciated.

Another issue raised by a member is ambiguity relating to the extent to which a bank must survey credit needs in the communities it serves. It gave the example of a recent edict that the bank must send a letter seeking information from every non-profit organization in its assessment area. This represents an unnecessary increased burden for the bank. It is contacted by many nonprofits in its community and has been responsive to all of those contacts. Its CRA program has received good ratings and it seems that failing to contact every nonprofit should not count against a bank if its CRA program is otherwise satisfactory or outstanding.

Sincerely,

Howard M. Headlee
President