

August 31, 2007

**Re: Notice and Request for Comment
Community Reinvestment Act; Interagency Questions and Answers**

OCC: Docket ID OCC-2007-0012

Board: Docket No. OP-1290

FDIC: RIN number 3064-AC97

OTS: ID OTS-2007-0030

1. Introduction

Community Capital Management (“CCM”), the registered investment advisor to The CRA Qualified Investment Fund (the “CRA Fund”), welcomes this opportunity to comment upon the proposed additions and revisions to the Interagency Questions and Answers Regarding Community Reinvestment published in the *Federal Register* on July 11, 2007 by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively the “Agencies”).

This comment focuses upon two newly proposed questions and answers (“Qs&As”):

- §__.12(g)—4, which states unequivocally that a majority-owned financial institution may receive CRA consideration for activities it undertakes with a minority- or women-owned financial institution or a low-income credit union even if the latter institutions are not located in, and their activities do not benefit, the majority-owned institution’s assessment area or a broader statewide or regional area that includes its assessment area; and
- §__.23(a)—2, which is intended “to clarify that an institution that makes a loan or investment in a national or regional community development fund must be able to demonstrate that the investment meets the geographic requirements of the CRA regulation.”¹

CCM strongly supports the basic premises underlying each of these proposed Qs&As, including the §__.23(a)—2 prohibition against investment “double-counts.” CCM has always taken careful steps to ensure that earmarked investments are never “double-counted.” In fact, our proprietary software enables us to track the purchase and allocation history of every shareholder. Allocations are made on a dollar-for-dollar basis, and the software prevents overlapping or over-allocated investments.

However, we do have two specific recommendations regarding Q&A §__.23(a)—2. The first would clarify that a financial institution that purchases new shares in an established fund may receive favorable CRA consideration for such shares based upon written documentation provided by fund managers indicating that the fund will use its best efforts to invest in a

qualifying activity that meets the CRA's geographic requirements. The second recommendation would eliminate a potential conflict between Q&A §__.23(a)—2 and Q&A §__.12(g)—4.

Specifically, as discussed in detail below, CCM recommends that:

- (1) the word "new" be deleted from the third full sentence in the answer to Q&A §__.23(a)—2, which describes how a financial institution can demonstrate compliance with the CRA's geographic requirement by providing written confirmation that the fund will use its best efforts to invest in qualifying activities that meet the CRA's geographic requirements; and
- (2) language be added to Q&A §__.23(a)—2 that reiterates and reaffirms that the CRA's general geographic requirement does not apply to investments in minority- or women-owned financial institutions or low-income credit unions that are made on behalf of a financial institution by a national or regional community development fund.

2. About CCM and the CRA Fund

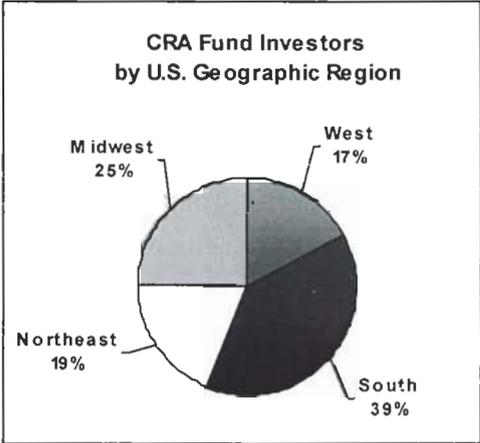
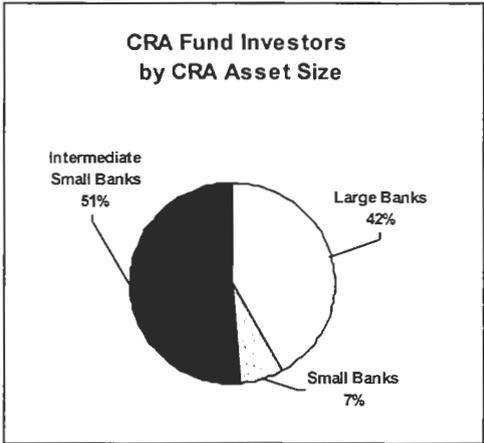
CCM is the registered investment advisor to the CRA Fund, a \$740 million mutual fund with investments that support community development activities. Since 1999, CCM's geographically- and economically-targeted investments have directed \$2 billion toward community initiatives in all 50 states. As of August 15, 2007, our investments have financed 133,000 affordable rental housing units; 5,000 home mortgages for low- and moderate-income families; \$30 million in affordable healthcare facilities; \$147 million in community development activities including neighborhood revitalization and brownfield redevelopment; \$97 million in job training and creation programs; and \$323 million in down payment assistance and statewide home-ownership programs.

The CRA Fund has also used its assets to meet special challenges. CCM has invested almost \$20 million toward its \$100 million Gulf Coast Initiative, which was implemented in 2005 to generate infrastructure, housing, economic, and community development—and redevelopment – in coastal communities following that year's active hurricane season. To date, investments that comprise the Gulf Coast Initiative include Small Business Administration loan pools, taxable municipal bonds, and single and multifamily mortgage-backed securities. A similar initiative launched last year has directed \$31 million to investments that finance the start-up and continuation of small businesses in low- to moderate-income, minority, and emerging communities.

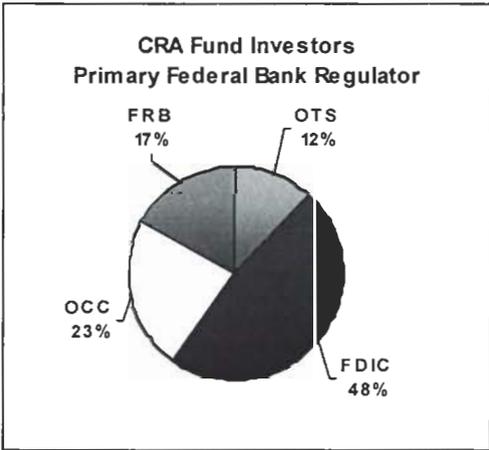
In addition to having undertaken these community development activities, the wide range of financial institutions that invest in the CRA Fund makes CCM uniquely situated to comment upon the newly proposed Qs&As. As the following charts indicate, CRA Fund investors are a diverse lot whether diversity is measured by asset size, geographic location, or an institution's primary federal regulator.



For example, over half of the CRA Fund’s current shareholders are small or intermediate small banks, according to CRA asset size thresholds, and CRA Fund shareholders include financial institutions from throughout the United States.



There is also substantial diversity regarding the primary federal regulator of banks that invest in the CRA Fund.



To date, CRA Fund shareholders have collectively completed more than 400 CRA performance examinations following their purchases of shares. Of these, more than 100 were the second or third examination following the purchases. In every instance, our shareholders have earned positive considerations for their investments in the CRA Fund.

3. Reassuring Financial Institutions that Documentation from an Existing Fund Can Be Used to Demonstrate that an Investment Satisfies the CRA’s Geographic Requirements



Proposed Q&A §__.23(a)—2 reiterates the general principle that in order to receive CRA credit for investment in a national or regional fund with a primary purpose of community development, the financial institution “should be able to demonstrate”² that any investment it makes in the fund meets the geographic requirements of the CRA regulation. “If, however, a fund does not become involved in a community development activity that meets both the purpose and geographic requirements of the regulation for the institution, the institution’s investment generally would not be considered under the investment or community development tests.”³

Expanding upon this admonition, proposed Q&A §__.23(a)—2 suggests three different ways that a financial institution might demonstrate that its investment in a fund meets the geographic requirement for CRA consideration:

- 1) “[I]f an institution invests in a **new** nationwide fund providing foreclosure relief to low- and moderate-income homeowners, 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 geographic requirements may be used for these purposes” (emphasis supplied).⁴
- 2) A “fund may explicitly earmark all projects or investments to its investors and their specific assessment areas.”⁵
- 3) For those funds that do not allow earmarking, “each investor institution may claim its pro-rata share of each project that meets the geographic requirements of that institution.”⁶

CCM believes that the three methods proposed for meeting the geographic requirement are viable and appropriate. Indeed, CCM has long earmarked CRA Fund investments so that the money invested by an individual institution is used for community development in the geographical area that the investor serves. However, the first example given in proposed Q&A §__.23(a)—2, in particular the reference to an investment in a “new” fund, may have unanticipated and unintended consequences.

Indeed, it is unclear why the Q&A makes the subject of the first example an investment in a “new” fund. Does the choice of the word “new” mean that the documentation option is available only when a financial institution invests in a new fund? Does the documentation option not apply when a financial institution purchases shares in an established or “older” fund that has not yet made an earmarked investment in the financial institution’s assessment area but will use its best efforts to do so?

Such a restrictive interpretation of the Q&A would make it difficult for an established fund to raise new capital and to expand its community development efforts into geographic areas that it may not previously have served or to make additional investments in areas it already serves. As with “new” funds, having immediate access to capital enables established funds to more effectively find and make timely investments in worthy community development projects. However, whether an established fund (which, of course, all new funds hope to become) will



continue to have access to ready capital becomes more problematic if investors construe the first example given in proposed Q&A §__.23(a)—2 as meaning that they cannot rely on documents from an established fund to satisfy the geographic requirement for favorable CRA consideration.

CCM doubts that the Agencies intended or anticipated that the reference in the first example given in proposed Q&A §__.23(a)—2 to a “new” fund might be construed in a manner to discourage financial institutions from purchasing new shares in an “old” fund. Indeed, such a restrictive construction would be completely inconsistent with (1) the way that the Agencies have historically treated new investments made in such funds,⁷ and (2) the proposed Q&A’s declaration that regulators will take a flexible approach in determining whether investments in a fund meet the geographic requirement for CRA consideration. Accordingly, CCM recommends that the word “new” be eliminated from the first example given in the proposed guidance.

4. Broader Geographic Criterion for Investments in a Minority- or Women-Owned Financial Institution or Low-Income Credit Union by a National or Regional Fund

CCM strongly supports the adoption of proposed Q&A §__.12(g)—4, which states that majority-owned financial institutions may receive favorable CRA consideration for activities in support of a minority- or women-owned financial institution or a low-income credit union even if the latter institutions are not located in, and their activities do not benefit, the majority-owned institution’s assessment area or a broader statewide or regional area.

The issuance of formal regulatory guidance on the CRA implications of a majority-owned institution’s assistance to minority- and women-owned financial institutions and low-income credit unions outside its assessment area is long over due. In 1992, Congress amended section 804 of the CRA [codified at 12 U.S.C. §2903(b)] to explicitly state that majority-owned institutions were to receive favorable CRA consideration for such assistance.⁸ However, this authority has never been fully reflected in existing regulations or official guidance.⁹

Hurricane Katrina graphically demonstrated the need for explicit guidance regarding the greater flexibility that 12 U.S.C. §2903(b) gives the Agencies. According to the Chief of Staff of the Office of the Comptroller of the Currency, minority institutions told that regulator that it was “unclear what CRA credit a majority institution might receive for participating a loan out to a minority institution.”¹⁰ The Agencies eventually issued a joint letter to dispel the uncertainty regarding the extent to which majority-owned institutions from other parts of the United States would receive CRA credit for assistance provided to minority- and women-owned financial institutions and low-income credit unions in the region devastated by Katrina.¹¹

To the extent that proposed Q&A §__.12(g)—4 clarifies the principle that a majority-owned institution can receive favorable consideration for assistance provided to minority- or women-owned institutions or low-income credit unions outside its assessment area or a broader statewide or regional area, CCM supports this guidance. However, CCM is concerned that Q&A §__.12(g)—4 may not have its intended effect, if it is read in conjunction with proposed new Q&A §__.23(a)—2. The latter Q&A can be construed as resurrecting—even in the context of assistance to minority- and women-owned financial institutions and low-income credit unions—

the general geographic requirement for CRA-eligible community development activities. Indeed, the question portion of that Q&A ignores the “broader geographic criterion” cited in Q&A §__.12(g)—4 by asking whether “an institution [should] be able to demonstrate that an investment in a national or regional fund. . .meets the geographic requirements of the CRA regulation by benefiting one or more of the institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s).”

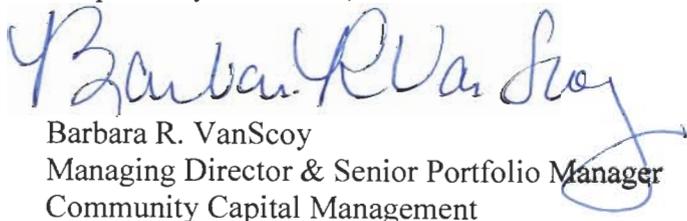
Accordingly, we believe that there is a substantial risk that financial institutions will interpret proposed Q&A §__.23(a)—2 as a statement to the effect that they still cannot receive favorable CRA consideration for assistance provided through regional or national community development funds to minority- and women-owned financial institutions and low-income credit unions, unless those institutions provide some benefit to the majority-owned institution’s assessment area or a broader statewide or regional area. We do not believe that the Agencies intend for proposed Q&A §__.23(a)—2 to be interpreted in this fashion. However, we see the potential for erroneous interpretations.

A simple way to avoid confusion is to include a reminder in Q&A §__.23(a)—2 that the geographic requirement discussed in that guidance does not apply to regional or national community development fund investments in minority- and women-owned financial institutions or low-income credit unions as covered by Q&A §__.12(g)—4.

5. Conclusion

Subject to the revisions recommended in this comment, CCM supports the adoption of proposed Qs&As §__.12(g)—4 and §__.23(a)—2. Guidance regarding assistance by majority-owned institutions to minority- and women-owned institutions and low-income credit unions is long overdue, and Q&A §__.12(g)—4 helps fill a critical need. It is important, moreover, that Q&A §__.23(a)—2 be drafted in terms that do not undercut the purpose and intent of §__.12(g)—4. Finally, CCM strongly believes that Q&A §__.23(a)—2 should be written in terms that permit a financial institution that purchases shares of an established fund to prove compliance with CRA geographic requirements by providing written documentation from the fund that it will use its best efforts meet those requirements. If community development funds are to undertake new projects and expand their scope to serve new areas of the country, investments in established funds should receive the same treatment as investments in a new fund.

Respectfully submitted,


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