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To: FDIC
Re: RIN 3064-AC97

Community Reinvestment Act
Interagency Questions & Answers Regarding Community Development and other suggested topics to be clarified

Dear Sirs,

GeoDatavVision is a consulting firm specializing in the Community Reinvestment Act and the Home Mortgage Disclosure Act. We advise and provide services to hundreds of community banks around the country and we frequently observe the confusion surrounding those Acts.

The proposed Questions & Answers help to clarify a number of unclear areas under the Community Reinvestment Act. However, they fail to address other areas of widespread confusion and inconsistent practice and simultaneously create new questions. The following are our comments on (1) the proposed Q&A's and (2) suggestions regarding other ambiguities and problem areas in need of clarification.

Q&A §__.12(g)(2)-1: "Examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals"
Comment – We approve of these clarifying examples

Q&A §__.12(h)-8 and _.12(g): this question pertains to what is meant by "primary purpose" and the proposed language (1) adds a clarifying phrase confirming that an "institution may receive CRA consideration for the entire activity" as well as (2) adding an entirely new interpretation "in certain limited circumstances in which these criteria have not been met. . ." This new added interpretation would allow CRA consideration for "activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component *or* (emphasis added) an affordable housing set-aside required by federal, state, or local government. . ." at the "election" of the institution.

Comments - we approve the addition of the first clarifying phrase recognizing that an institution may receive consideration for the "entire activity". However, we believe the added interpretation has potentially confusing language in that it implies that mixed-income housing itself may qualify for consideration because of the insertion of "*or* (emphasis added) an affordable housing set-aside". Is it the intention that a project having mixed-income housing would qualify, even without an affordable housing aspect? Perhaps that was your intention because it may be applicable under revitalization/stabilization rather than the "affordable housing" definition of community development under the Regulation. But we are not clear about your intention.

We also believe the proposed added interpretation really adds nothing new to how the

Agencies interpret community development under the Regulation. Our viewpoint is explained in more detail in response to the questions to which you have asked respondents to reply as explained below.

The Agencies have solicited opinions to certain questions regarding the foregoing proposed change as follows:

Will the proposed revision, allowing pro rata CRA consideration for low- and moderate-income housing set-asides, spur the construction and rehabilitation of housing for low- and moderate-income persons? We believe the proposed change will not have any impact because under the second interpretation of "primary purpose" currently in effect the Agencies already recognize for community development consideration projects in which less than half the cost or fewer than half the beneficiaries meet a qualified community development purpose. Moreover, during a CRA performance review examiners are instructed to weigh the impact of a community development activity on a community. Thus projects with an affordable housing component that is less than half the units or cost of the project currently are recognized and weighed as long as they meet the 3 conditions inherent in the second definition of "primary purpose" as currently applied. We suggest that a lender that is sophisticated enough to recognize this alternative method does not need the new interpretation. Furthermore, lenders who don't already recognize and understand the alternative definition will not intentionally qualify projects under the proposed added interpretation because they lack the sophisticated knowledge of this technical distinction in the first place. It may be that some lenders who did not solicit an explicit written statement from a developer announcing their intention to provide affordable housing in a project will belatedly recognize the opportunity to claim community development credit, but that would be entirely fortuitous and ipso facto will not "spur" the construction of such housing. We are very skeptical of the impact of this proposed change on increased affordable housing.

Should the special pro rata consideration be restricted only to instances where a government entity requires a set aside . . . ? If the provision is adopted to encourage the development of affordable housing we suggest that it not be limited to instances where a formal government requirement is imposed. "Affordable housing" is affordable housing, whether imposed by government mandate or not (although we recommend that a precise definition of affordable housing be added to the Q&A's in our recommendations below).

How should the amount of the pro rata share be determined for reporting purposes . . .? We suggest that the Agencies be consistent with respect to the amount reported. At the present time, lenders report the entire amount of any loan they originated, even if less than 100% of the activity qualifies as community development. Why would the agencies change this practice? The proposal also creates accounting problems for banks who potentially have to report an amount greater than or less than the value of the loan they originated. Bankers already have enough problems and confusion with respect to the Regulation. Your interpretations are supposed to clarify and improve understanding, not obfuscate issues and confuse lenders. This inconsistency and the potential for confusion is underscored by your very next question which acknowledges that another clarification would be required.

We have worked with hundreds of banks to help them meet their CRA responsibilities and we have seen much confusion regarding the issues below. We also believe that the current interpretations to some of these items lead to an inconsistent reporting of certain loan transactions and undermine the value of the CRA aggregate and disclosure database as an indicator of community small business credit needs and as a reference point for comparing bank performance. We suggest these additional CRA issues that should be added to the Q&A's to clarify confusing issues and to make publicly reported CRA data more consistent and meaningful.

Q&A §__.22(a)(2)-7 addresses loans and refinancings to small business that are secured by a one-to-four family residence. A large number of small business loans are made to corporations and the loans are guaranteed by the principals. Frequently these *guarantees* are secured by second mortgages on dwellings. Under Reg C the Agencies have distinguished this as an *indirect* form of collateral that would disqualify a refinancing from being reported as such, ceteris paribus. In these loan situations, the financing (or refinancing of the line) wouldn't be reported under HMDA (because it is not a HMDA "refinancing" due to the *indirect* nature of the security or because the proceeds are not used to purchase a dwelling or for home improvement purposes). ***Does the CRA distinguish collateral used to secure loan guarantees as opposed to directly securing the loan?*** We have asked this question to field examiners and agency personnel and have received conflicting responses. Moreover, if the goal of CRA is to measure how a bank is meeting the "need for credit services in its community", why would the Regulation disqualify a very large number of small business loans from being reported (the volume of small business lending reported itself should be a reliable indicator of the community need for small business credit)? We urge the Agencies to clarify this ambiguous situation. Even the Call Report Instructions say nothing about this. Please issue a Q&A clarifying the treatment of a *small business loan guarantee secured by residential collateral*. We strongly suggest that the Agencies treat collateralized guarantees consistent with the interpretation of this matter under Regulation C.

Under Q&A §__.42(a)(5), regarding the reporting of **refinancings and renewals**, the Agencies state, "renewal refers to an extension of the term of the loan". Many small business lines of credit are secured by business assets. Many banks structure those loans with notes callable on demand to avoid the necessity of refilling UCC statements every year. This means that the annual renewal of those lines is not reportable because the tenor of the note has not changed. At the same time, banks that do rewrite the note do report such loans. Moreover, unsecured lines of credit are reported annually when they are renewed. ***This results in a gross under-representation of the volume of small business lending extended by banks thereby giving an inaccurate picture of how banks are "meeting the need for credit services" under CRA*. It also effectively means that *there are large inconsistencies in the Aggregate and Disclosure CRA data depending on how banks technically renew their lines of credit to small business***. For example, we have two community bank clients in the same city. Each one handles the renewal of secured business lines of credit differently. One bank uses demand notes and the other uses time notes. When the lines are renewed annually, one bank reports all the lines it has renewed and the other does not report any. This seriously distorts the comparison of these banks.

Moreover, it distorts and understates the Aggregate data for that market thereby giving a misleading impression of the need for small business credit. *Why would the agencies tolerate such an inconsistency that undermines the integrity and meaningfulness of the Aggregate & Disclosure data?* If a bank does not change the tenor of a note documenting a renewed line of credit but formally notifies the borrower that it has extended the line for another year why should it not report the renewal of the line? We urge the agencies to reconsider this situation and to allow the reporting of lines of credit renewed annually even if the tenor of the underlying note is not changed as long as the bank has made a credit decision and committed to an extension of the line of credit. Adopting this approach will create a far more accurate picture of not only how any one bank is "meeting the need for credit services" in its small business market, but also will ensure that the performance context data created by the reported small business loans more accurately reflects that market. We urge the Agencies to change the interpretation of a "renewal" under CRA and require reporting all "renewals" defined as loan extensions in which a new credit decision has been made, subject to the once-per-year rule. Please issue another Q&A under **§__.42** to correct this problem.

Affordable housing: This is another vague matter under CRA (and under HMDA). There is no precise authoritative definition in either CRA or HMDA. Affordable housing is one of those terms that everyone thinks they know and understand, but which has never been precisely defined in Reg. C or BB. Nor has it been addressed in the Q&A's, although a reference to it has been made in the Inter-Agency Interpretive Letter dated October 30, 1997. In fact our attempts to identify a definitive interpretation of the term "affordable housing" has demonstrated there is no consistent definition to be found anywhere. The closest we could come to a universal definition is that applied by the Department of Housing and Urban Development (HUD) which describes affordable housing as housing whose "occupancy costs" are less than 30% of the occupant's income. However, when determining what is included in "occupancy costs"we were advised by HUD that the items differ depending on the housing program administered by HUD. Generally speaking, for rental properties occupancy costs include rent plus heat and electric utilities. Whereas for owner-occupied housing, occupancy costs include mortgage principal and interest plus property taxes and property insurance. We encourage the agencies to adopt a clear definition of affordable housing as it applies to CRA.

Mixed use properties: Reg. C makes it clear that mixed use (residential and commercial uses) properties are to be reported under HMDA based on the "primary use" of the property. There is no such definitive statement or definition under CRA. We suggest the agencies make a clear statement for CRA purposes similar to the statement made for HMDA purposes.

Respectfully submitted,

Leonard Suzio, President
GeoDataVision