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To: FDIC (RIN 3064-AD47)

Date: August 7, 2009

Re: Comment on Need to Consider Convenience and Needs Factors, Including CRA,
In the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

The Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (RIN 3064-AD47) *properly* focuses on capital, ownership, transaction, guarantee, commitment, and related financial issues but, with all due respect, *improperly* ignores important non-financial issues, namely Convenience and Needs factors, including compliance with the Community Reinvestment Act of 1977 (CRA).

FDIC applications for proposed depository institution are evaluated relative to the "Section 6" factors in the FDIC Act ([12 U.S.C. 1816](#)), namely:

- The financial history and condition of the depository institution;
- The adequacy of its capital structure;
- Its future earnings prospects;
- The general character and fitness of its management;
- The risk presented by such depository institution to the deposit insurance fund;
- The Convenience and Needs of the community to be served by the depository institution; and
- Whether its corporate powers are consistent with the purposes of the Act.

The Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions addresses different elements of all of the above except the "Convenience and Needs" factors, which relate to the determination and meeting of the deposit and credit needs of the community to be served. An important part of these factors is meeting the requirements of the CRA, which are usually evaluated in the context of a "CRA Plan" submitted by the applicant for a proposed depository institution.

It makes sense that safety and soundness and related financial issues trump compliance and consumer protection issues like CRA when a problem bank is being closed and acquired by a new group such as a private equity firm, especially in the midst of the worst recession and financial crisis since the 1930's. However, the decisions by the FDIC and other regulators today regarding the qualifications of private capital investors in these transactions will impact local communities for many, many years after this recession and crisis are over. Thus, these short-term resolution decisions have long-term implications.

For these and other reasons relating to potentially adverse impact on consumers and communities, good public policy suggests that the FDIC's Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions explicitly address the Convenience and Needs factors, especially CRA. This may best be done by requiring any bidder on a failed bank acquisition, including private equity and other investor groups, to detail their plans to meet the requirements of this factor, including the preparation of a written CRA Plan as is required for a proposed depository institution. If, for example, two competing bids are substantially the same in terms of least cost resolution and related financial factors, the bid with the better plan to address Convenience and Needs factors, and particularly the better CRA Plan, should be the preferred one. The FDIC will not know who has the better plan unless it is required up front as part of the bidding process as recommended here.

Thank you for the opportunity to submit this comment.