January 4, 2006

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

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutions Avenue, NW
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Re: Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed questions-and-answers to help banks comply with recently adopted changes under the Community Reinvestment Act rules. Earlier this year, the Federal Deposit Insurance Corporation (FDIC), Federal Reserve and Office of the Comptroller of the Currency (OCC) revised their CRA rules by increasing the size threshold for the streamlined exam, adding a new community development assessment for "intermediate small banks" between $250 million and $1 billion in assets, and expanding the definition of activities that qualify for community development by including additional activities in certain rural areas and designated disaster areas. The questions-and-answers, issued on an interim basis, are designed to help banks and examiners with the new requirements.

[1] The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than $631 billion in insured deposits, $778 billion in assets and more than $493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

INDEPENDENT COMMUNITY BANKERS of AMERICA The Nation's Voice for Community Banks℠
One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Overview of ICBA Comments

Generally, ICBA finds the proposed guidance to be helpful and encourages the agencies to continue to develop guidance to help bankers and examiners with CRA requirements. However, the ICBA is concerned that the guidelines may place too great an emphasis on activities that benefit low- and moderate-income individuals. While it is appropriate to encourage institutions to undertake activities that benefit low- and moderate-income individuals, difficulty in obtaining data to substantiate this was one of the problems the revisions to the CRA rules was designed to correct. In many nonmetropolitan areas, low- and moderate-income census tracts are not segregated as they are in large metropolitan areas, and identifying low- and moderate-income individuals may not be easily accomplished. Community banks may conduct activities that benefit an entire community but may not have sufficient data to demonstrate the particular benefit to low- and moderate-income individuals. That was one of the problems the revisions were designed to address, but the guidance seems to backtrack and reintroduce the problem. ICBA is concerned that guidance might divert resources from activities that would benefit local communities if it is impossible or burdensome to demonstrate a benefit to low- and moderate-income individuals, even though the benefit may be there. ICBA recommends that the guidance provide that an activity that benefits an entire community will be granted credit under CRA.

In addition, ICBA urges the agencies to publish a list of designated disaster areas for ease of reference; allow more than one-year as a lag time for activities designed to benefit areas affected by natural disasters; adopt the one-year lag time for distressed and underserved nonmetropolitan areas; and not distinguish between activities given credit in distressed nonmetropolitan areas versus underserved nonmetropolitan areas. ICBA agrees that it is appropriate to publish annual threshold adjustments to the size of small and intermediate small banks. We also find the proposed guidance on activities qualified for community development services and qualified investments helpful and recommend the agencies continually update the lists.

Background

Last spring, as advocated by ICBA for many years, the FDIC, OCC and Federal Reserve raised the threshold for the small bank CRA streamlined exam to $1 billion in assets. At the same time, the agencies added a new community development assessment for "intermediate small banks" between $250 million and $1 billion in assets. Instead of the separate lending, services and investment tests, the intermediate small bank community development test will consider a combination of these three elements based on the bank's own unique capabilities and market. And, for all banks, the revisions expanded the definition of community development to include activities that benefit designated disaster areas and distressed or underserved middle-income rural communities.

To help interpret the revisions, the agencies are proposing 13 new questions-and-answers to supplement existing guidelines. Seven of the new questions specifically address the expanded definition of "community development" for all banks. In addition, three revisions are proposed to supplement existing questions-and-answers on qualified services, qualified investments and activities by small bank affiliates.

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Definition of "Community Development"

Disaster Areas

Under the revisions to the CRA rules, activities that benefit a designated disaster area would qualify for CRA credit. At this time, the agencies do not plan to publish a list of designated disaster areas. ICBA urges the agencies to reconsider. Publishing a list would eliminate confusion on which areas have been designated and provide useful information for examiners and bankers.

To identify a designated disaster area, the agencies plan to use the "designation" and "expiration" dates when an area is designated as a disaster area as benchmarks. ICBA agrees that these benchmarks are appropriate since it should help avoid confusion about when an area qualifies.

Once an area has been designated, the guidelines would establish a "one-year" lag period so that activities in the area would still qualify for CRA credit up to one year after the designation as a disaster area was lifted. The ICBA does not believe that one year may be sufficient. In part, this may be due to uncertainty over when the designation has been lifted, which is another reason it would be useful for the agencies to publish a list. However, even so, some community bankers have suggested that relief for natural disasters can last up to five to ten years after the occurrence of the disaster, depending on the magnitude of the disaster. While one-year might be sufficient for some natural disasters, recent events on the Gulf Coast suggest that a one-year lag time is woefully inadequate. At a minimum, the ICBA recommends that the lag-time be at least two to three years.

The guidance would explain that not all activities that benefit a disaster area would be considered equally. Instead, extra weight would be given for activities that benefit low- or moderate-income individuals. ICBA disagrees with this approach. While CRA is intended to ensure that credit is provided to all segments of a bank's assessment area, including low- and moderate-income individuals, natural disasters do not make distinctions based on income levels, and recovery for the entire community is critical. ICBA believes that this is one instance where the tendency to resort to low- and moderate-income analysis is not appropriate and might be detrimental to the overall recovery of a community affected by natural disaster.

In granting CRA credit for activities that benefit a designated disaster area, examiners would consider the particular needs and circumstances of the area. ICBA agrees that this is appropriate.

Distressed or Underserved Middle-Income Non-metropolitan areas

The new CRA rules outline the criteria that the agencies will use to identify areas as distressed or underserved middle-income non-metropolitan areas. A community will be designated as "distressed" on the basis of poverty rates, unemployment and population loss. A community will be designated as "underserved" when it might have difficulty meeting essential community needs due to population size, density and disbursement. A community can be both distressed *and* underserved. A list of designated areas will be published on the FFIEC website, www.ffiec.gov.

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Similar to the "lag period" for disaster areas, the agencies are proposing to allow activities to qualify for CRA credit for up to one year after an area ceases to be designated as distressed or underserved. While ICBA does not believe one-year is sufficient for natural disasters, the one-year lag time is probably appropriate for areas that were designated as distressed or underserved. After an area is no longer considered distressed or underserved, it can most likely be assumed that prior efforts to benefit the area have been successful. However, the critical analysis will be whether the improvement can be sustained.

The guidelines would clarify that more weight would be given to activities that benefit distressed areas than those that benefit underserved areas. ICBA disagrees that such a distinction is appropriate. For example, while a distressed area may need more assistance than an underserved area, an underserved area can easily become a distressed area if the infrastructure is not given sufficient support. By creating the proposed distinction, the agencies are likely to create an unintended consequence by encouraging activities that favor distressed areas at the cost of activities that benefit underserved areas, thereby creating conditions that are detrimental to underserved areas that might cause underserved areas to become distressed. Therefore, ICBA recommends this artificial distinction not be introduced.

As proposed, an activity will receive credit under CRA if it benefits a *distressed* middle-income nonmetropolitan area by helping to attract and retain businesses and residents as part of a bona fide revitalization or stabilization plan. ICBA agrees that this is appropriate.

In contrast, for an *underserved* middle-income nonmetropolitan area, an activity would be considered to help revitalize or stabilize the area if it facilitates the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks or affordable housing. However, to qualify under the proposed guidelines, the activity would have to serve low- and moderate-income individuals (although not exclusively).

Again, ICBA is concerned that this emphasis on low- and moderate-income factors reintroduces problematic elements that necessitated revisions to the CRA rules. While it may be appropriate to encourage efforts that benefit low- and moderate-income individuals, it can be difficult to identify those individuals within nonmetropolitan communities, where census tracts are not as neatly segregated as they are in urban areas. Moreover, for many bank products and services, such as deposit products, community banks do not collect data on individual income levels and therefore do not have the data to support whether activities benefit low- and moderate-income individuals. Therefore, ICBA urges the agencies to be more flexible with this guidance to avoid undermining the revisions to the rules. Where an activity benefits the broader community, it should be granted credit under CRA.

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Community Development Services

The guidance would outline the following examples as activities that would qualify as a "community development service:"

- providing financial services to low- and moderate-income individuals through branches located in low- and moderate-income areas
- providing technical assistance on financial matters to organizations that serve low- and moderate-income individuals or areas
- providing technical assistance on financial matters to small businesses or community development organizations that apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program
- lending employees to provide financial services for affordable housing organizations
- providing credit counseling or home-buyer counseling to promote community development and affordable housing
- establishing school savings programs or teaching financial education for low- and moderate-income individuals
- providing electronic benefits transfer and other services to improve access to financial services for low- and moderate-income individuals
- providing international remittance services that benefit low- and moderate-income individuals
- providing other services that improve low- and moderate-income individuals access to financial services

ICBA believes it is helpful to include these examples. They provide a general overview of the types of activities examiners should consider acceptable. ICBA also recommends the agencies continue to update this list and publish additional activities on the FFIEC website. This can provide useful guidance, but it can also provide a collateral benefit for all communities by providing examples of creative solutions used in one community that can be replicated in other areas of the country.

Qualified Investments

Under the guidance, when examiners consider whether a particular investment is qualified for CRA purposes, activities in existence during the prior examination which are still outstanding would be specifically eligible. One of the problems identified by community groups under current CRA requirements is that banks feel compelled to discontinue certain projects because examiners no longer deem an activity worthwhile because it is no longer innovative or new, when ongoing support is vital for the community. Therefore, ICBA agrees this revision is entirely appropriate, since continuing support and involvement in an activity continues to benefit the community.

The guidance also would offer the following examples of qualifying entities for investments under CRA:

- Financial intermediaries, including community development financial institutions and community loan funds
- Organizations engaged in affordable housing activities

- Organizations that promote economic development by financing small business
- Facilities that promote community development in low- and moderate-income areas, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers
- Projects eligible for low-income housing tax credits
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as credit counseling, home-ownership and financial education
- Organizations that support activities essential to low- and moderate-income areas, such as day care operations and job training programs

As with the examples provided for community development services, ICBA finds these examples helpful. At this time, we do not have any recommendations for additions to the list, but encourage the agencies to continue to update the list as appropriate as well as publish examples of qualified investments on the FFIEC website to serve as a reference for examiners and bankers, and to encourage banks to undertake creative solutions that have been successfully applied in other areas of the country.

Small Bank Examination

Under the revisions, a small bank may elect to have an affiliate's activities considered for CRA purposes. If a small bank makes this election, the guidance would require the bank to maintain "sufficient information" to allow examiners to evaluate the activities and to ensure that the activities are not claimed by another institution. ICBA agrees with this approach.

Intermediate Small Bank Community Development Test

Under the "intermediate small bank" community development test, the bank will be assessed on a combination of community development loans, qualified investments and community development services. The guidelines specify that a bank may not ignore one or more of these categories. Generally, ICBA agrees. However, ICBA also believes that individual institutions should have sufficient flexibility to allocate resources as appropriate, as the revisions to the rules provide. If opportunities for one category are not present in a particular community, such as qualified investments, then the bank should not be penalized for not engaging in the activity. That is one of the problems that the revisions were designed to address, and ICBA finds it would be inappropriate to reintroduce an element that the changes were designed to address by an interpretation that requires a bank to engage in every category. The guidelines would further specify that an intermediate small bank has the flexibility to allocate resources as it sees fit and that are the most responsive to community development needs. Appropriate levels would depend on the bank, the community and local opportunities. ICBA agrees that this should be the focus of the interpretation.

Again, the guidelines would provide that examiners would consider services that benefit low- and moderate-income individuals or that are provided through facilities located in low- and moderate-income areas. ICBA is concerned that this reintroduces an

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element that the revisions were designed to correct. While it might be appropriate to stress activities that benefit low- and moderate-income individuals, there are many situations where activities that benefit the community do not include data that can demonstrate a particular benefit to low- and moderate-income individuals.

The guidance would also outline the factors that examiners would consider in evaluating whether a bank is responsive to community development needs. Generally, examiners would consider quantitative measures, such as the number and amount of community development loans and investments, but also the bank's responsiveness based on the bank's capacity, business strategy, and community needs and opportunities. ICBA believes this is helpful, since it allows individual community banks sufficient flexibility to work within their own communities and play to their own strengths, as encouraged by the changes to the CRA rules.

Thank you for the opportunity to comment. If you have any questions or would like additional information, please contact the undersigned by phone at 202-695-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

Robert G. Rowe

Robert G. Rowe, III
Regulatory Counsel