CBA | CONSUMER BANKERS ASSOCIATION
The Voice of the Retail Banking Industry

November 10, 2014

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

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1497

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 17th Street
Washington, DC 20219
Docket ID OCC-2014-0021

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

Dear Sir or Madam:

On behalf of the Consumer Bankers Association (CBA),[1] we appreciate the opportunity to comment on the proposal (Proposal) by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) to amend the Interagency Questions and Answers (Q&A) regarding Community Reinvestment Act (CRA).

CBA is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses.

[1] Founded in 1919, the Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets. Our members are active and supportive of strong community development and affordable housing activities in their assessment areas throughout the US.

Our comments are divided by sections of the Q&A, in the order presented in the Proposal.

Access to Banking Services

Availability and effectiveness of retail banking services

Q&A Section__.24(d)-1

The Agencies are proposing to revise this section and Q&A section __ .24(d)(3)-1 to clarify how examiners should consider and evaluate alternative delivery systems for retail banking services within its assessment area. The proposal is intended to provide additional clarification on the extent to which such alternative delivery systems will be considered in a CRA exam. As the Agencies note: "Changes in technology and the financial markets increasingly provide opportunities for financial institutions to use alternative delivery systems effectively to provide needed services to low- and moderate-income geographies and individuals." Therefore, the intent of the change is to "encourage" the availability and use of all types of delivery systems to help meet the needs of low- and moderate-income (LMI) geographies and individuals, while not diminishing the value full-service branches provide to communities.

We believe this amendment is good and long overdue. The current Q&A language has led to a disproportionate emphasis on full service branches over other delivery means. It is generally recognized that a considerable majority of the Service Test is focused on operations at the full service branch location, while all other CRA activities considered under the Service Test may amount to only a small percent of the total weight for CRA activities. Therefore, past efforts by financial institutions to demonstrate the effectiveness of their alternative delivery systems have not received much recognition, which fails to encourage innovation in this space. This beneficial change to the Q&A will help to remove the stigma and give appropriate consideration to non-branch delivery systems, without detracting focus from full service branches.

Nevertheless, it is still important to stress the value of branches as an important component in the delivery of financial services to local markets, and the significance of branches to CRA, for traditional branch-based banks. A traditional bank has the opportunity to become a part of its local community through the physical presence of a branch or other deposit-taking facility, and by providing members of the community with employment. As active members of these small, neighborhood communities, bank employees can best understand the needs of the local community, and thus provide a variety of products and services to meet those specific needs, including targeted outreach to underserved sectors and sound structuring of customized lending and investing products. This beneficial neighborhood relationship is why we believe CRA assessment areas must retain a connection to the location of the bank's branches, and not be expanded to include geographies without branches or physical deposit taking facilities.

While traditional branches remain important, their role is rapidly evolving. A recent study prepared for CBA by Novantas, for example, showed fundamental changes in how consumers are using their banking services. Specifically, in 2006, 70% of bank customers said they preferred depositing funds at a branch, as compared with alternative means of deposit. By 2014 that number had dropped to 35%. When resolving an issue with the bank, 53% of respondents in 2006 said they would prefer to use a branch, while only 36% shared that preference in 2014.

This trend is not limited to upper income consumers. Lower and middle income consumers are actively involved in online and mobile channels, as well. This year, customers with incomes of $25,000-$50,000 most often use online and mobile (as opposed to branches, ATMs, or telephones) as their *primary* channel for checking balances and transferring funds, while only using branches as their main channel when making deposits. Although branches are still the predominant means of obtaining financial advice, the percentage of customers who rely on branches most often for financial advice remains consistent across every income bracket.

With the proliferation of mobile banking, mobile phones have become a particularly significant channel. Through mobile banking, cell phones now have the ability to improve one of the most important aspects of any household – financial management – by providing consumers with greater access, reduced costs, increased money management tools, and enhanced financial education. The Board's third annual survey of mobile financial use aptly captures this change in consumer preference. As of 2013, 87% of the adult U.S. population had a mobile phone, 61% of which were "smartphones" with Internet capability.[2] The change in recent years has been dramatic. Between 2012 and 2013, there was a 52% increase in smartphone ownership, with the adoption of smartphones highest among minority groups. Notably, 73% of Hispanic and 63% of African American populations use smartphones, compared to 58% of non-Hispanic whites.[3] The Board recognized the potential benefits resulting from increased mobile phone usage, asserting "[t]he relatively high prevalence of mobile phone and smartphone use among younger generations, minorities, and those with low levels of income – groups that are prone to be unbanked or underbanked – makes mobile phones a potential platform for expanding financial access and inclusion."[4]

In short, there is a growing need to provide for recognition of these changes in the context of the CRA Service Test, which is why we support the proposed changes in the Q&A. Branches remain very important for traditional retail banks, and CRA assessment areas should remain grounded by consideration of full service branch locations; but the benefits of providing services to the assessment area should not be only or predominantly based on branch location. Given greater consideration to alternative delivery systems, banks will have an increased incentive to

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[2] Board of Governors of the Federal Reserve System: *Consumers and Mobile Financial Services 2014* p. 4 (March 2014) http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201403.pdf.
[3] *Id*.
[4] *Id*.

establish these services that will ultimately benefit consumers by providing more banking choices and tools.

Q&A Section __ .24(d)(3)-1

Q&A Section __.24(d)(3)-1 is being amended to give further guidance on factors examiners use to evaluate the availability and effectiveness of alternative delivery systems for LMI geographies and individuals. These are both valuable additions to the Q&A. The list of factors includes, but is not limited to:

- *Ease of access, physical or virtual;*
- *Cost to consumers, compared with other delivery systems;*
- *Range of services;*
- *Ease of use;*
- *Rate of adoption; and*
- *Reliability of the system.*

For the reasons stated, we are very supportive of the direction of the Q&A changes in this area. We believe these are useful guides for examiners in evaluating alternative delivery systems, and we are pleased to see these are only examples of the types of factors examiners may consider. We request you clearly state the list should not be construed as a complete list of the factors that examiners must consider when making the evaluation.

It should be noted, however, banks have no direct information about the income of their deposit account customers. Therefore, it is particularly challenging to assess the demographic information about their customers under the Service Test without relying on proxies. Although new approaches may become available over time, the only real proxy available for financial institutions is geographic location (i.e. LMI geographies). Yet the language of proposed Q&A Section __.24(d)(3)-1 refers to access to the alternative delivery system to low- and moderate-income geographies and low- and moderate-income individuals. [5] The principal way in which institutions demonstrate that their alternative delivery systems are available to and used by LMI customers is to rely on the customer's residence as a proxy for their income. In fact, the same proxy is used in the case of branches, where the branch's location is the principal means of determining whether the branch is serving an LMI customer base. There is no reason to expect anything different for alternative delivery systems. Therefore, it would be preferable to clarify that institutions may use LMI geographies or such other proxies for LMI individuals as may be available, so examiners do not expect financial institutions to provide data that are not available to them. [6] Indeed, the last sentence of the section states: "Examiners will consider any

[5] The Agencies are inconsistent in their use of a conjunction when referring to LMI geographies and/or individuals. Sometimes they are presented as alternatives, where either might apply, and sometimes with the conjunction "and" suggesting that both must apply. It does not appear this is intentional.

[6] It would also be undesirable for institutions to ask their deposit account customers for their incomes. We believe many LMI applicants would be unwilling to provide such information and might believe they are being discriminated against if they are asked for their incomes when opening accounts. In the case of accounts being opened on line or by alternative means, the highly streamlined mechanisms which make such systems desirable would be undermined by the need to respond to additional questions at account opening.

information an institution maintains and provides to examiners demonstrating that the institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals, such as data on customer usage or transactions."

In the final analysis, the success of these changes will depend on their application by examiners, which will, in turn, depend upon training and experience. We believe this should help to mitigate the excessive emphasis on brick and mortar full service branches, and allow dynamic market advancement to be reflected in CRA performance evaluations.

Innovative or Flexible Lending Practices

Q&A Section __.22(b)(5)-1

One of the five performance factors used by examiners in the Lending Test for large financial institutions is an assessment of the institution's use of "innovative or flexible lending practices" in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies. Innovative or flexible practices augment the success and effectiveness of the institution's loan program. They are qualitative considerations that are not required, but may be used to enhance CRA performance. The Agencies are proposing to expand the list of examples of innovative or flexible lending practices.

The two new examples of such practices being proposed are:

a) *In connection with a small dollar loan program offered in a safe and sound manner and with reasonable terms, outreach initiatives or financial counseling targeted to LMI individuals or communities.*
b) *In connection with mortgage or consumer lending programs targeted to LMI geographies or individuals consistent with safe and sound lending practices, underwriting standards that use alternative credit histories that benefit LMI individuals.*

The Agencies seek comment on whether the addition of these examples will benefit LMI individuals.

We support the addition of these new examples, however we must introduce a practical note. We believe there is little reason to think the addition of small dollar lending program outreach and counseling will convey much benefit as long as financial institutions are unable to provide sustainable small dollar lending programs that meet the needs of their customers. A number of institutions that previously offered small dollar loan programs ceased to offer them when the OCC and FDIC issued guidance restricting the type and manner of product deemed permissible and many other institutions have refrained from creating and offering them. We appreciate the Agencies' efforts here; however, the guidance and counseling which would otherwise be beneficial are moot if institutions cannot provide the products in the first place. Giving additional CRA benefit to features of small dollar lending programs will not be enough, in our opinion, to encourage institutions to innovate in this product type.

The Proposal also states that any small dollar lending program under this provision would have to have "reasonable terms" to receive CRA consideration. This language only adds confusion, as it is not clear what qualifies as "reasonable terms" and therefore whether the guidance and counseling would receive consideration.

In regard to underwriting standards relying on the use of alternative credit histories, we support innovative attempts to expand access to credit, but we believe the goal of access to credit should be balanced against safety and soundness considerations. The importance of safe and sound lending principles cannot be stressed enough. We urge the Agencies to work closely with their respective prudential regulatory departments to ensure there are no conflicting expectations and that the Agencies send a consistent message.

Economic Development

Q&A Section __.12(g)(3)-1

Community Development activities (CD Loan, Service, or Qualified Investment) are defined as those that:

- *Promote economic development by financing small businesses and farms;*
- *Community or tribal-based child care;*
- *Community services targeted to LMI persons;*
- *Affordable housing (including multi-family rental) for LMI individuals; or*
- *Activities that revitalize or stabilize LMI areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies*

Q&A section __.12(g)(3)-1 states there is a two-part test for the first category, activities that promote economic development by financing small businesses and farms: One is a "size test" for the business or farm, and the other is a "purpose test."

The size test requires the business to meet the SBA, SBDC or SBIC eligibility standard or have gross annual revenues $1 million or less. The purpose test is designed to promote economic development by supporting permanent job creation, retention or improvement for individuals who are "currently" LMI, LMI geographies, or targeted redevelopment areas. There is a presumption that a business meets the purpose test if it has a loan or investment in an SBIC, SBDC, rural business investment company, new markets Venture capital company, or a new markets tax credit eligible community development entity.

The Agencies are proposing to make a few changes to the Q&A to provide greater clarification on the meaning of economic development. The changes would clarify that the benefit need not be only for persons who are "currently" LMI, as that had unintended incentives of supporting low wage jobs. The Proposal would also provide more information about what activities promote economic development.

We believe both these changes are beneficial; however, we would support the elimination of the "purpose test" altogether from the measure of economic development. While the creation of jobs is critical to economic development, it should not be necessary to prove that jobs were created, preserved or enhanced by the capital infusion resulting from lending and investment in small businesses. Job promotion should be implicit when investing in economic development. The language of the regulation does not require it, and the Q&A should not either. The difficulties of passing the purpose test outweigh the benefit and may be a disincentive for institutions to make use of community economic development as a CRA category.

Certainly, some businesses create more jobs than others; though there is no clear indication of which types, sizes, or ages provide the most job creation, and newer studies continue to expand our understanding.[7] Many issues have yet to be resolved: Do high-impact businesses create more jobs than others? How does one defined high-impact? Are startups better at job creation than other small businesses? As further studies are conducted, differing opinions and perceptions emerge about which businesses best promote job creation. Since there is no consensus among researchers and economists, the bank should not be put in the position of trying to establish-- in the context of a CRA exam--that its activity supports permanent job creation or retention.

Currently, unless something is identified in the Q&A as *presumptively* promoting economic development, it is unlikely to be regarded as such by most banks because of the confusion and uncertainty about the activities that qualify. The Proposal's suggestions for greater clarity are helpful, but we recommend simplifying the process by removing the purpose screen entirely. By eliminating the purpose test, banks would be more likely to use the economic development criterion, thereby creating more capital investment in small businesses and better promoting job creation overall.

Further complicating this section, the list of factors that promote economic development are described as "examples" in the introductory material, but are presented as a comprehensive list of factors in the actual Proposal. We believe the Q&A should be amended to clarify that the list of activities which are considered to promote economic development is a <u>nonexclusive</u> list of examples, and is not exclusive of other factors that meet the purpose test.

We also support the addition of investments in CDFIs that finance small businesses or small farms to the list of entities that presumptively promote economic development.

Community Development Loans

Q&A Section __.12(h)-1

Q&A Section __.12(h)-1 provides examples of community development loans. The Agencies propose adding an additional example to clarify how examiners may consider loans related to

[7] See, *e.g.* Small Business Administration and Job Creation, Congressional Research Service (January 2013) http://fas.org/sgp/crs/misc/R41523.pdf ; and Small Business Administration: An Analysis of Small Business and Jobs (March 2010)
http://www.sba.gov/sites/default/files/files/an%20analysis%20of%20small%20business%20and%20jobs(1).pdf

renewable energy or energy efficient technologies that also have a community development component, which are known collectively as "green investments."

We are supportive of additional examples, where possible, as they improve the likelihood the activity will receive consideration. We have often found that, in the absence of examples in the Q&A, examiners are unwilling to give CRA consideration for activities, even if they are beneficial. Often the benefits to LMI individuals or communities are not easily quantified, or the institution is unable to expend the resources necessary to quantify them on the chance they might receive CRA consideration.

We support the inclusion of "green investments" as an example of community development loans. We believe LMI households benefit even more than middle- and upper-income households from green investment, as the utility savings can be disproportionally significant to LMI individuals.

Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

Q&A Section __.12(g)(iii)-4

Q&A Section __.12(g)(iii)-4 provides examples of activities that help revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies are proposing to revise this section by adding an example of activities that qualify as meeting essential community needs, to include: "A new or rehabilitated communications infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents."

We agree that the availability of broadband is often essential for persons, businesses and farms in underserved nonmetropolitan middle-income geographies to access banking services, particularly as some financial institutions introduce or expand alternative delivery systems. In addition, as noted by the Agencies, broadband access supports economic development in other ways, as small businesses and farms increasingly rely on it to market and deliver products, and to engage in financial transactions promoting their business enterprise, such as remote deposit capture and payment processing. We therefore support this addition.

Community Development Services

Evaluating Retail Banking and Community Development Services

Q&A Section __.24(a)-1

The Agencies are proposing to add two new Q&A's to help clarify the consideration of Community Development (CD) Services as a component of the Service Test. Q&A Section __.24(a)-1 is being proposed to clarify how Retail Services and CD Services are evaluated. The stated purpose is to improve consistency and reduce uncertainty regarding the performance *criteria; and to encourage additional CD Services by "affirming the importance" of this component of the Service Test.*

Greater clarity is certainly warranted, and we support the Agencies' efforts. But in the final analysis, examiner training and experience must be enhanced to ensure the correct activities are given proper consideration.

As worded, the Q&A distinguishes between the manner of evaluating Retail Services and the manner of evaluating CD Services. For the Retail Services, examiners consider the "availability and effectiveness" of the institution's systems to delivery banking services to LMI geographies and individuals, the "range" of such services in LMI geographies, and the "degree" to which they are tailored to LMI geographies. For CD Services, examiners consider the "extent" they are offered, and the "responsiveness and effectiveness" because they "improve or increase access" by LMI individuals or in LMI geographies. The Q&A further notes that examiners will consider "any information provided by the institution" that demonstrates the CD services "are responsive to those needs" [presumably the needs of LMI geographies or individuals].

The intent of these subtle distinctions ("availability and effectiveness" versus "responsiveness and effectiveness"; "range and degree" versus "improve or increase access") is not easy to discern. Whether they will prove useful to examiners or institutions will depend entirely on their application in practice, which underscores the need for experienced examiners and comprehensive exam training. Regardless of application, it is also not clear how this language is intended to reduce uncertainty, encourage additional CD Services, or improve consistency.

The most useful part of the Q&A may prove to be the statement that examiners will consider any information provided by the institution. This statement may provide a counterweight to the tendency of some examiners to limit their consideration to a few criteria (though it is similar to language in new Q&A Section __.24(e)-2, and may be redundant here).

Q&A Section __.24(e)-2

The addition of proposed Q&A Section __.24(e)-2 is intended to help standardize the ways in which CD services are evaluated quantitatively. The Agencies note that some Performance Evaluations focus on the number of hours employees spend in board meetings or undertaking other service work, while others focus on the range of services provided or the number of organizations served. They also note that examiners frequently fail to give adequate consideration to whether the products or services are responsive or effective. We agree there is a lack of consistency in the evaluation of CD Services, and we support the Agencies' efforts to remedy this problem.

The proposed Q&A states that examiners will not limit their evaluation to only one quantitative factor, such as the number of hours an institution's staff devotes to a CD Service and instead examiners will look at the degree to which the CD Services are "responsive" to community needs. It also repeats the pronouncement in proposed Q&A Section __.24(a)-1 that examiners *will consider any relevant information that quantifies the extent and responsiveness of CD Services.*[8]

We support the new language if it gives examiners the needed direction to consider other factors besides hours worked when making quantitative evaluations of CD Services. As noted elsewhere, we believe the effectiveness of this change will depend on its application during the exam process and greatly depends on the training of the individual examiner. It is also important for banks to have the flexibility to be able to provide whatever data they believe is useful, such as hours, number of activities, number of nonprofit partners, etc. as the situation of each bank will be different and support the need for different considerations.

Responsiveness and Innovativeness

Responsiveness

Q&A Section .__28(a)-3

The term responsiveness is used in the regulation and Q&A as a criterion in the consideration of an institution's performance. Responsiveness is described as a qualitative element used in assessing performance, and can increase the weight examiners give to a particular activity when considering CRA performance. An institution's performance context influences the assessment of responsiveness of a given activity. The Agencies have introduced a new Q&A to provide general guidance on how examiners evaluate whether a financial institution has been responsive to credit and community development needs. The Agencies state the Q&A is intended to encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context.

The Q&A states examiners, in order to determine "responsiveness," first evaluate the volume and type of in institution's activities, then consider qualitative factors, including the effectiveness of the activities. Examples of the latter are the application of "specialized expertise or effort" or the provision of a benefit to the community not otherwise available. The Q&A also states activities are considered particularly responsive to community development needs if they benefit LMI individuals or geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. According to the Q&A, responsiveness is assessed in light of performance context, and the Proposal sets forth steps examiners may take in determining performance context.

We support efforts to provide greater clarity in this area and find this guidance helpful, with a few caveats. First, if responsiveness is indeed a qualitative consideration, it is not clear why responsiveness should necessarily equate with effectiveness. Effectiveness is everyone's ultimate goal, but it is more of a quantitative consideration, not a measure of the responsiveness of the

[8] In fact, this states examiners will also consider any relevant information provided by the institution "and from third parties," a reference missing from the similar proposed language in proposed Q&A Section .__24(a)-1. Although it is not clear why this needs to be stated twice in the Q&A, if it is repeated, we suggest it be made consistent.

institution to community needs. Second, it is also not clear whether the discussion of how examiners assess performance context, with its list of sources examiners may use, is appropriate here. It appears to be more relevant to the definition of performance context, where it can apply wherever performance context comes into play.

Innovativeness

Q&A Section __.21(a)-4

Innovativeness, like responsiveness, is a term that appears frequently throughout the regulation, but often raises questions about its appropriate application. The Agencies are proposing a new Q&A to provide greater clarity around the meaning of the term. We are very supportive of any additional insights the Q&A is able to provide, however we have some concerns about the new provision.

The proposed Q&A would clarify that "innovativeness" has two possible meanings: First, it may apply to meaningful improvements to an institution's products, services or delivery systems, responding more effectively to consumer or community needs, particularly those segments enumerated in the definition of community development. Second, for institutions that "do not have the capacity to be market leaders in innovation," it may refer to the introduction of products, services or delivery systems to their LMI customers, or to customers or segments not previously served.

We support viewing innovativeness in these two ways, however, we do not understand why innovation that involves the introduction of existing products to new markets is only available to institutions that "do not have the capacity to be market leaders in innovation." There is no good reason this form of innovation should be considered second tier, and limited in its application. Moreover, by creating a limitation, it further complicates the use of "innovativeness" and forces institutions to be categorized (or to self-define) as incapable of innovation through the introduction of new products and services. Either form of innovation should be given consideration for any institution because communities and consumers stand to benefit either way.

In addition, the Agencies state, "Institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community." This appears intended to eliminate any perverse incentive created by the introduction of "innovativeness" as a criterion for consideration. That is, institutions that that have products and services effectively meeting the needs of their communities should receive full consideration without regard to whether they have recently innovated. In fact, it is stated clearly elsewhere in the Q&A (Q&A Section .__28-1) innovativeness is not required for a "satisfactory" or "outstanding" rating. Innovativeness, therefore, only functions as a positive, and not a negative. It appears the Agencies are trying to say something similar here. However, as worded this might be viewed as suggesting that innovativeness "simply to meet this criterion" would not receive consideration, or might even be considered a negative. We would recommend this language be deleted, or, if retained, amended as follows: “Innovativeness is not required by the regulation, and its absence does not negatively affect CRA consideration; however, the presence of innovativeness augments CRA consideration.”

Thank you for the opportunity to comment on the Proposal. If you have any questions or you wish to discuss any of these issues further, feel free to contact me.

Sincerely,

Steven I. Zeisel
Executive Vice President & General Counsel