American Bankers Association
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July 23, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Docket ID OCC-2010-0010

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD60

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1387

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Community Reinvestment Act Regulations, Neighborhood Stabilization Program Proposal

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR)[2] that would revise the rules under the Community Reinvestment Act (CRA). The four banking agencies propose changing the definition of "community development" to facilitate projects that meet criteria established by the Department of Housing and Urban Development (HUD) as part of its Neighborhood Stabilization Program (NSP). The intent is to use CRA on a short-term basis to supplement existing federal grants in neighborhoods affected by foreclosures.

ABA supports stabilizing and revitalizing neighborhoods impacted by foreclosures and agrees that such activity merits favorable CRA consideration. However, we object to using the CRA as a mechanism for endorsing particular federal programs to the exclusion of alternative private sector initiatives that serve similar goals. Accordingly, ABA opposes the rule amendment as proposed. Instead, we recommend a more flexible standard that recognizes stabilization and revitalization activities can receive CRA credit independent of HUD NSP eligibility criteria.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.
[2] 75 *Federal Register* No. 121, June 24, 2010, p. 36016 *et seq.*

Background

According to the agencies, there is a pressing need to help communities affected by high foreclosure levels. ABA agrees.

Congress allocated nearly $4 billion to redevelop abandoned and foreclosed properties through the Housing and Economic Recovery Act of 2008 (HERA).[3] Then, under a second round of funding in the American Recovery and Reinvestment Act of 2009, nearly $2 billion in additional funds was provided for local communities affected by the economic downturn. Under these programs, HUD determines which applicants receive funds.[4] Generally, the HUD NSP program is intended to benefit designated low-, moderate-, *and middle-income* areas.

The proposal would revise the definition of "community development" to include loans, investments and services that support, enable or facilitate projects or activities that meet the criteria established by HERA (essentially, codify support for programs approved by HUD).

If adopted, the following would be examples of CRA-eligible activities that would receive favorable consideration, *but only if included within NSP targeted areas*:

- donating OREO property to a non-profit housing organization in an eligible low-, moderate- or middle-income geography;
- Financing to purchase and rehabilitate foreclosed, abandoned or vacant properties; or
- Loans, investments or services that support redevelopment of demolished or vacant properties consistent with NSP.

In addition, if a financial institution can demonstrate it has adequately addressed community development needs within its assessment area, it would be eligible for credit for NSP-eligible activities outside its assessment area.

The current enabling legislation for the HUD NSP program will terminate in the near-term. However, since Congress has not identified the final date and since Congress could allocate additional funds to continue the program, the proposal would include a sunset set two years after the last grant monies must be spent under the HUD program.

Finally, the agencies stress that this proposal would establish no new requirements for banks. ABA would suggest, however, that if these activities are good for the local community with taxpayer support, they remain no less good for the community if conducted without taxpayer funds being involved. Both are efforts to address financial needs of the community and should be recognized as meeting the provisions of the Community Reinvestment Act.

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[3] Recipients have been determined by need. Each of the 50 states and Puerto Rico have received awards of at least $19.6 million and an additional 254 localities received grants totaling $1.86 billion.

[4] The five eligible uses designated by HUD under the programs are: financing for purchase and redevelopment of foreclosed homes; purchase and rehabilitation of abandoned or foreclosed homes; land banks for foreclosed residential properties; demolition of blighted structures; and redevelopment of demolished or vacant properties. Funds must be used for individuals and families whose income does not exceed 120% of the local median income, no less than 25% of funds must be used to purchase and redevelop abandoned or foreclosed homes or properties for individuals and families whose incomes do not exceed 50% of median area income.

ABA Comments

Serving the Entire Community. First, the proposal would benefit communities and individuals that are low-, moderate-, *and middle-income.* ABA strongly supports such an appropriate expansion of the communities and individuals eligible for favorable CRA consideration. The CRA statute, which applies to insured depository institutions, clearly states that its purpose is "to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[5] The statute goes on to provide that banking supervisors should "assess the credit needs of its entire community, including low- and moderate-income neighborhoods…"[6]

What is critical to emphasize is that the statute applies to the local community, including *but not limited to* low- and moderate-income areas and individuals. The statute is *not* restricted to low- and moderate-income geographies. However, creating an overlay that confines CRA to low- and moderate-income geographies and individuals can produce harmful effects by actually discouraging lending to the community.

Unfortunately, the emphasis on the low- and moderate-income elements has become an element stressed by some examiners, to the detriment of middle-income portions of local communities. Bankers report that they have encountered instances where an inability to clearly document and demonstrate that a project serves a majority of low- and moderate-income individuals means that the examiner will not consider the project under CRA at all. As a result, projects that may benefit the community-at-large can go undone because the income information on the residents who benefit is unknown or cannot be conclusively demonstrated to the satisfaction of an examiner. ABA strongly applauds the added flexibility in the proposal that expands to middle-income individuals and geographies, a step that is more consistent with the statutory mandate.[7]

Restrictive Targeting. While ABA supports the goal to assist more than low- and moderate-income neighborhoods impacted by foreclosures and believes such a step to be a goal more in keeping with CRA, ABA believes that the proposal is nevertheless in some ways flawed. Instead of building on existing funding under the HUD NSP, ABA believes that it would be preferable to provide favorable CRA consideration for *any and all* efforts and projects that stabilize a community suffering from foreclosures.

By restricting the proposal to the HUD NSP, the proposal would encourage funds and projects to go to areas already receiving federal support. As a result, the proposal would draw CRA resources to areas and communities that have received federal funds while drawing capital away from other areas not supported by the NSP. This misallocation of capital would do a disservice to communities that need funds but that for whatever reason are not covered by the federal program. Areas already funded through the federal program would get additional support at the cost of communities that could equally deserve and need support.

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[5] Community Reinvestment Act of 1977, section 802(b).
[6] Community Reinvestment Act of 1977, section 804(a)(1).
[7] The 2005 changes to the CRA rules also encourage projects that include middle-income individuals and geographies where the activity benefits communities designated as underserved or distressed.

In addition to drawing capital away from communities or parts of communities, there are other shortcomings to the proposed approach that relies on the HUD NSP. First, it sets a bad precedent by letting the federal government pre-determine which programs should be given favorable consideration under CRA. The overall goal of CRA is to encourage individual institutions to determine the needs and best ways to serve their entire local communities. The proposal would cede the decision to the federal government as to which communities or which parts of communities bank lending should go. Second, it ignores any communities that have not qualified for the HUD program for any reason.[8] Third, the value of these stabilization and revitalization activities is dependent on the needs of a particular community's circumstances—which are sure to vary from place to place— and should not be limited to the arbitrary sunset of a Federal program.

There is a better approach. ABA recommends that the agencies amend the definition of community development to embrace more broadly stabilization and revitalization of a bank's local community, including (but not limited to) low-, moderate- and middle-income geographies suffering from foreclosures or other adverse circumstances. This will more fittingly track the purpose of CRA to serve the credit needs of its entire community, including low- and moderate-income neighborhoods, but without excluding other neighborhoods that warrant such stabilizing and revitalizing efforts that have not been targeted by a Federal program. Once such a basic regulatory amendment is achieved, the agencies could opine in Q&As that activities dovetailing with the HUD NSP would be **one example** of favorable revitalization and stabilization, but clearly acknowledge that similar activities outside NSP targeted areas would also obtain favorable CRA consideration.

If the rule were amended to establish favorable CRA consideration for any community affected by foreclosure or other adverse economic conditions, and not restrict it to a specific short-term federal program, the goal of CRA would be far better served.

Restrictions to an Institution's Assessment Area. Under the current rules and guidelines, when a depository institution has met the needs of its local assessment area, activities outside that assessment area will be favorably considered.[9] This is a long established principle in the CRA rules and exam process and should have as much applicability in the situations contemplated by this proposal as it has in connection with other lending, investment and service performance contexts.

Sunset. Finally, the agencies ask whether it is appropriate to provide a sunset for the revision inasmuch as the program that the proposal would supplement is not evergreen. Were the agencies to adopt the approach recommended in our letter – whereby all efforts to address adverse economic decisions are recognized – then the question of the sunset of the particular HUD program would be moot. Otherwise, tying the plan to the HUD NSP of necessity means that the CRA consideration would sunset with the end of the HUD program, even if the local financial needs—and the willingness and ability of banks to respond to those needs—continue.

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[8] There are many communities across the country that may have applied for HUD funding but been denied while others may not have applied but which would otherwise qualify. That should not discourage CRA consideration. However, examination and regulatory pressures on banks will make them more likely to allocate funds they know will be approved rather than taking additional steps and using additional resources to demonstrate qualification for a project that would not enjoy an automatic CRA imprimatur.

[9] For example, see the guidance in the *CRA Questions and Answers* under Performance Criteria, .22(b)(2) and (3)-2.

Conclusion

ABA believes that steps that support and encourage efforts by depository institutions to help individuals and neighborhoods affected by foreclosures are worthwhile. However, ABA believes that, in keeping with the spirit of CRA, each institution is best suited to assess the needs within its own capabilities and markets and determine how to provide such support that will truly meet local needs. Restricting a program to existing federal funding will only add capital where capital has already been provided at the expense of neighborhoods outside those already receiving federal support. ABA also believes that the preferred way to accomplish this goal is to provide supplemental guidance that explains such activities are consistent with a suitably flexible definition of community development that recognizes the validity of stabilizing and revitalizing more than just low- and moderate-income neighborhoods.

If the agencies provide guidance that grants favorable consideration for stabilizing and revitalizing activities that benefit communities affected by foreclosure that are not restricted to a single federal grant program or to a single type of geography, the agencies will take a step forward toward flexibility consistent with the goals of CRA.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact Rob Rowe by e-mail at rrowe@aba.com or by telephone at 202-663-5029.

Sincerely,

Robert G. Rowe, III
Vice President/Senior Counsel