November 10, 2014

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RE: **Proposed Changes to the Interagency Q&A Regarding Community Reinvestment**

OCC: Docket ID OCC-2014-0021
FRB: Docket OP-1497
FDIC: Attention: Robert E. Feldman

To Whom It May Concern:

The Greenlining Institute (Greenlining) thanks the FDIC, OCC, and FRB (The Regulators) for the opportunity to comment on proposed changes to the Interagency Q&A Regarding Community Reinvestment (CRA Q&A) to improve its intended value and usefulness for communities on the margins. We also extend our appreciation to the agencies for continuing to update and refine the CRA Q&A, yet, as expressed in our May 17, 2013 response, given the rapid changes in the banking industry, the proposed modifications simply do not keep pace and do not go far enough.[1]

Greenlining works to fight the lingering effects of redlining and ensure that, regardless of race or zip code, everyone can realize their own version of the American Dream. In a nation where people of color will make up the majority population by 2050, America will prosper only if communities of color prosper. We pursue a multi-issue platform of racial and economic justice to promote America's future prosperity.

Our coalition is comprised of over 40 community based organizations, including housing counseling agencies, technical assistance providers, CDCs, CDFIs, ethnic chambers of commerce, and other key

[1] Greenlining Institute, "Re: Proposed Changes to Interagency Q&A," OCC-2013-003, FRB OP-1456, FDIC CRA Q&A, May 17, 2013, https://www.fdic.gov/regulations/laws/federal/2013/2013-cra_interagency_qa-c_68.pdf

community service suppliers who are dedicated to protecting and exceeding the economic, housing, and businesses needs of communities of color and low-income populations.

CRA is a critical tool for preserving our communities right to access fair and sustainable financial services and the capital it provides. It helps ensure that banks offer quality mortgages and small business loans to our communities and encourages community development services. Despite its critical utility in pushing banks to better serve LMI markets, CRA is severely dated and cannot realize its full potential.

The FDIC, OCC, and FRB must implement bold and aggressive changes to the CRA regulation in order to ensure banks are truly meeting the financial services needs of LMI consumers and communities. Only then can regulators move forward and ensure that banks sustainably and responsibly increase lending, investing, and services in LMI communities.

Below please find Greenlining's recommendations to improve CRA.

I. General Comments: Make CRA Matter Again Modernize It

Currently, CRA is the only comprehensive tool to ensure that banks serve consumers outside of upper-income geographies. Unfortunately, as it stands, CRA is outdated and therefore lacks the influence and reach to address shifting innovations in the financial services sector. While we understand that CRA cannot be everything, it certainly can move into the twenty first century.

For years, Greenlining and other key organizations have been advocating for a real shift in CRA. We urge the regulators to move swiftly and bring the meaningful change that CRA needs to be relevant to our communities. In addition to the changes to the Q&A in the next section, it is urgent that the FDIC, OCC, and FRB modernize the CRA by doing the following:[2]

A. Strengthen Evaluation and Grading. As stated in our letter to the Federal Reserve and FDIC:[3] examiners of all agencies must encourage banks to increase overall services to LMI consumers. While banks continue to receive a record number of satisfactory ratings, yet statistics on the unbanked, underbanked, and the public's confidence in the banking system are in stark contrast. Therefore, it seems that regulators and the public, have conflicting views on the definition of satisfactory and of meeting credit needs of consumers.

This is further shown by recent bank CRA Performance Evaluations that received "Satisfactory" performance ratings even when showing low performance on lending, investments, and/or services. Examiners and the agencies they represent must no longer jeopardize the integrity of CRA by inflating bank progress reports and overall ratings.

Regulators could improve CRA performance evaluations by using better, consistent, and more transparent metrics to assess how a bank serves its assessment areas. Currently, the criterion used to rate a bank's performance has no "apples to apples" comparison, and seems subjective. Below is a list of "criterion" used throughout the CRA regulations and its supporting Q&A:

- Provide a benefit to…
- Responsiveness to…
- Available and effective in providing…
- Accessibility to…
- Meets the needs of…

[2] Please refer to our in-depth recommendations referenced in Appendix A and B.
[3] Ibid.

The examiner determines whether a banks performance meets the aforementioned criteria by considering a number of factors, most of which *should* only be answered by consumers, and information primarily provided by the bank itself.

Regulators are honest in admitting that public feedback and comments on individual bank CRA exams almost never happens. Therefore, the examiners current toolbox for evaluating a bank's CRA tests is incomplete. It is imperative that regulators strengthen how it evaluates and grades banks in the CRA examination process.

B. **Greater Merger Scrutiny.** We are concerned that mergers are still taking place even for institutions with questionable CRA ratings. The agencies should simply bar any mergers or acquisitions by any financial institution with a "Low-Satisfactory" or lesser CRA rating.
Furthermore, there is little clarity on how regulators ultimately decide to approve or reject public hearings. Currently, the burden of proof is on community to prove the need for these hearings. We find the evidence to be clear: the public comment process is outdated and inaccessible to even the most educated and connected people. This is in addition to other barriers of access including: language, broadband, technology, and familiarity with the financial regulatory structure. There is no question that in-person hearings are more accessible than writing and submitting comment letters.[4] Regulators must be more explicit about what it takes for a merger to rise to the level of public hearings.

We still await a more transparent explanation for how regulators decide whether to have public hearings, and why they approve mergers.

C. **CRA must include demographic data, especially by race and ethnicity.** CRA was intended to end redlining, and abolished many explicit laws creating separate and unequal access to homeownership. People of color, who were outright denied opportunities to build assets for so long, saw a brief glimmer of hope before the crisis, only to see new assets stripped away due to the same discriminatory practices. ,

Since the onset of the crisis and subsequent recession, we have witnesses an unprecedented loss of wealth in communities of color. A leading reason for this loss of wealth is the growing loss of home equity, much of this due to the disproportionate targeting of predatory loans to people of color.

The recent crisis, the countless fair lending violations, buybacks, and settlements should make it clear that some financial institutions still practice redlining in more ways than one. For this reason alone, it should be clear that CRA should have better eyes on how banks serve all markets, especially in communities of color. Until banks reflect and adequately serve communities of color, we cannot truly have a "safe and sound" banking system.[5]

D. **CRA Authority must extend beyond brick-and-mortar and outside formal assessment areas**. Banks are evolving in the digital age. They are no longer confined to traditional branches

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[4] Greenlining Institute, "Open Letter to the Federal Reserve and the FDIC, 21st Century Mergers: 'Low Satisfactory' is 'Satisfactory' to Regulators," April 21, 2014, http://greenlining.org/wp-content/uploads/2014/04/Greenlining-Calls-on-Fed-and-FDIC-to-Not-Accept-Low-Satisfactory-CRA-Performance-4-17-14-final.pdf

[5] Preeti Vissa, Remarks at the San Francisco Fed. Community Reinvestment Act Hearing, August 17, 2010, http://www.occ.gov/static/cra/cra-testimony-preeti-vissa.pdf

to operate. CRA must encourage large Internet banks that take deposits and lend across the nation to give back to those same communities. These banks are benefitting from loopholes in regulation, and only invest in the communities where they have branches. Furthermore, as banks continue closing branches, especially in LMI areas, CRA will continue to lose influence.

Furthermore, while agencies encourage lending beyond bank assessment areas (geographical areas with bank branches that are scrutinized by CRA), this should be required. Such changes will help increase community development lending and investing in smaller cities and rural areas that are predominantly outside bank AAs. For example: underserved communities, especially rural, lack deposit-taking entities within their borders. The San Joaquin Valley in California is one of the most populated and impoverished regions in the U.S. with a population of 3.9 million and a poverty rate of 20.8%. Despite its population, the presence of banks is sparse.

Therefore, AAs should be determined by where an institution has a significant market presence, whether there is a physical branch or not. If 0.5% of all of an institution's loans originate from a particular locality, that locality should become an AA. This model of AA would thus be proportional to a bank's overall operations. The former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks.

In addition to the above recommendations, Greenlining offers the following comments and recommendations regarding the proposed Interagency Q&A:

II. Access to Banking Services

A. **Proposed Q&A § .24(d)-1 and § .24(d)(3)-1-Availability and Effectiveness of and Alternative Systems for Delivering Retail Banking Services.** While we agree that CRA must account for changes in banking technology and how customers engage with financial institutions, access to bank branches must continue to receive primary emphasis in determining a bank's CRA service test rating. This must remain for several reasons:

1. Nothing substitutes in-person assistance, especially to help navigate confusing products, disclosures, and services.
2. Banks are already providing services online, there is no need for further incentives or CRA credit to do so, the market has already done that for us.
3. Rural communities are still experiencing high levels of banking deserts, a change in branch emphasis could assist in decreasing already limited access to responsible banks.
4. The existence of online and mobile technologies and services alone is insufficient. To warrant CRA credit, it must be clear that:
   a. Those services are accessible to LMI individuals and geographies;
   b. There is actual adoption of those technologies by LMI individuals and geographies;
   c. Those technologies are the preferred method of engagement; and
   d. Those services are not the sole method for LMI individuals and geographies to engage financial institutions.

B. **Additional recommendation-Regulators should leverage the service test to improve bank responsiveness by encouraging banks to provide services, onsite, and materials, in languages other than English.** Including this would ensure that banks truly tailor its services to meet the needs of all geographies in which it provides services.

In the wake of the crisis, language barriers were a key factor in the number of predatory loans, scams and the high level of foreclosures in Latino and Asian American communities.

Financial information is hard to understand, even for native English speakers. Language barriers create discomfort, stress, insecurity, confusion, and ultimately can lead to bad financial decisions. These barriers prevent limited-English proficient (LEP) consumers, who nationally represent over 22.5 million Americans, from obtaining adequate financial services.[6] The number of LEP individuals in the U.S. has grown 81 percent since 1990 and California makes up roughly 27 percent of the nation's LEP population.[7]

It is critical that banks attract and serve consumers in the language they are most comfortable speaking, and CRA is the right avenue to encourage this necessity.

III. Community Development

A. <u>Proposed Q&A § .12(h)-1</u>-Community Development Loans and Energy Efficiency. As a multi-issue organization, Greenlining is excited to explore how to leverage CRA investments to comprehensively support the health and wealth of LMI communities.

We request the Regulators provide more clarity on the definition of "green". For example, could this be expanded to cover Storm water and Green Infrastructure (GSI) needs for municipalities? Many cities are planning or required to upgrade their storm water systems. This requires new construction to add these new systems to existing buildings. These systems are expensive and could increase the cost of affordable housing construction.[8]

In general, Greenlining supports the proposal to include financing "green" technology, such as renewable energy or energy-efficient equipment, for affordable housing benefitting LMI families and households. Furthermore, loans used for "green" infrastructure upgrades have the potential to create more jobs and business opportunities to LMI consumers and people with barriers to employment.[9] Nevertheless, it is imperative that, before approving such additions, regulators identify a standard measurement to identify the cost savings and benefit to these LMI families and households.

The California Public Utilities Commission (CPUC) has been at the forefront of identifying energy-efficiency impacts. Pilots are currently in-progress to better understand which financing models apply to different market participants. We urge the Regulators to connect with the CPUC to better understand its pilot and findings.

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[6] Greenlining Institute Public Comments, Enhancing HMDA, Docket No. CFPB-2014-0019, 10-29-14, Page 5.

[7] Batalova, Jeanne and Whatley, Monica, Migration Policy Institute, "Limited English Proficient Population of the United States," July 25, 2013, http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states/

[8] Please refer to links for examples of fee structures:
http://www.phila.gov/water/wu/stormwater/Pages/ResidentialSWBilling.aspx,
http://www.dcwater.com/customercare/rates.cfm#understanding

[9] Sanchez, Alvaros, http://gfa.fchq.ca/focus/water/staying-green-and-growing-jobs-green-infrastructure-operations-and-maintenance-as-career-pathway-stepping-stones/

Below is a list of "green" financing examples that the Greenlining Institute supports for CRA credit:

1. **Non-profit Owned Community Shared Solar**. A charitable nonprofit corporation administers a community shared solar project on behalf of donors or members. For example, Solar for Sakai Project and Winthrop Community Solar Project- both in Washington state, are successful examples of community solar owned by non-profits.[10]

2. **On-Bill Repayment Program.** There are already quite a few community development bank models that exist across the country that support this idea. Currently, the CA Public Utilities Commission has authorized pilots on-bill financial financing. The pilots are set to end in 2015.

   A cornerstone of the recommended pilot program is a "credit enhancement" strategy (e.g., loan loss reserve) for residential and non-residential markets in which ratepayer funds are leveraged to achieve more deal flow, primarily through reduced interest rates, during the pilot period. A second critical element is the introduction of a repayment feature on a customer's utility bill for non-utility EE financing. Significantly, no residential service disconnection is authorized for non-payment of EE loans. A third feature is a database that includes project performance and loan repayment history to inform what hopefully will become new underwriting criteria for the financial industry.

3. **Workforce, Education, and Training (WE&T)**. California is currently in the process of reviewing WE&T standards and training for all energy efficiency workers. Whether or not new standards are implemented, there are minority-owned businesses/contractors (specifically serve low-income communities and hire from local disadvantaged communities, and have most or all of their workers who are from disadvantaged background) that can greatly benefit from having a better-trained workforce.

   For example, some of Greenlining's coalition members are contractors for the state's Energy Savings Assistance Program, a program that provides retrofits for low-income households. Loans should be available to these businesses to make them more competitive in the bidding process.

B. Proposed Q&A § .12(g)-4-Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

As previously stated, Greenlining supports exploring how to leverage CRA investments to comprehensively support the health and wealth of LMI communities and increase access to critical services.

While we are excited to see this potential opportunity reach communities, the language as it stands must be strengthened. For example, the current proposed language could allow a bank to loan funds to T&T to build out its infrastructure, and get CRA credit for it. Greenlining would not support providing CRA credit for such a project.

We thank you for the opportunity to comment on these important proposed changes to the CRA Q&A, and look forward to future and more lucrative opportunities to further improve the CRA's potential.

[10] http://nwcommunityenergy.org/solar/solar-case-studies/copy2_of_the-vineyard-energy-project

APPENDIX A

May 17, 2013

Re: Proposed Changes to Interagency Q&A

OCC: Docket ID OCC-2013-0003
Federal Reserve: Docket No. OP-1456
FDIC: Attention-Comments on CRA Interagency Q&A

The Greenlining Institute appreciates this timely review of the Community Reinvestment Act (CRA) initiated by the Federal Reserve, the FDIC and the OCC ("the agencies"). We also extend our thanks to the agencies for continuing to update and refine the CRA Questions and Answers (Q&A). That said, given the rapid changes in the banking industry, the proposed modifications simply do not keep pace.

The Greenlining Institute works to bring the American Dream within reach of all, regardless of race or the zip code one is born into. In a nation where people of color will make up the majority of our population by 2050, we believe that America will prosper only if communities of color prosper. Our coalition is comprised of over 40 organizations across California, including over a dozen community-based organizations dedicated to meeting the housing needs of communities of color in California.

As advocates for some of America's most vulnerable communities, and large supporters of the CRA, we are disappointed by the minor changes in language and frame. The CRA has traditionally been an effective tool to encourage financial institutions to adequately serve all communities and consumers. Unfortunately, the proposed changes do not address the root of the problem: the CRA is stuck in the twentieth century.

The modernization and enhancement of the CRA has the potential to address key shifts in financial markets, and persistent inequalities in the financial health of low-to-moderate income communities and communities of color. Clearly, as it is written today, the CRA lacks the power and reach to address the constant changes in our financial system. For example, the CRA does not encourage large internet banks that take deposits and lend across the nation to give back to those same communities.

These banks benefit from unfortunate loopholes in regulation, and only invest in the communities where they have branches. Furthermore, as banks continue closing branches, especially in low-income communities, the CRA will continue to lose its influence.
As advocates for some of America's most vulnerable communities, we have urgent recommendations for the agencies regarding comprehensive revision to the CRA regulation. The

CRA is a critical tool for preserving communities' right to access to fair lending. Minority communities were among the hardest hit by the foreclosure crisis and the slowdown in lending. The agencies must implement bold and aggressive changes to the CRA regulation in order to increase responsible lending, investing, and services in low- and moderate-income communities, who are disproportionately minorities.

Below please find Greenlining's direct response to the Interagency Q&A proposed revisions:

Response to Revisions Proposed by the Agencies

Lending Beyond Assessment Areas

The first two revisions proposed by the agencies, which encourage lending beyond institutions' assessment areas (AAs, or geographical areas containing bank branches that are scrutinized by CRA exams) are a step in the right direction.

The agencies are correct to emphasize that financial institutions will receive favorable CRA consideration for activity outside their immediate AAs. Banks currently receive CRA consideration for lending in broader regions that encompass their AAs. Under the proposed changes, this lending need not encompass banks' AAs so long as it is not "in lieu of or to the detriment of" financing in the assessment area(s).

These changes will help increase community development lending and investing in smaller cities and rural areas by giving banks consideration for lending outside of their AAs. Many underserved communities, especially rural ones, lack deposit-taking entities within their borders. For example, the San Joaquin Valley area of California is one of the most populated and impoverished regions in the United States with a population of 3.9 million and a poverty rate of 20.8%. Despite its population, the presence of banks is sparse. In Southeast Fresno, for example, there are only three banks with one branch each to serve the entire community.

Greenlining would like to see the agencies modernize AAs a step further. These localities were defined decades ago, and do not reflect the realities of our time. Households used to save by depositing money with their neighborhood financial institution, which also served as their lender. Clearly, the financial industry has transformed since the days of these local brick-and-mortar depository institutions.

Today's AAs are still limited to geographical areas where banks have physical branches. This system has not kept pace with the evolving financial sector, in which banks make many loans beyond their branch networks online and through entities like subsidiaries and affiliates. As NCRC suggested in a 2001 comment, AAs should be determined by where an institution has a significant market presence, whether there is a physical branch or not. If 0.5% of all of an institution's loans originate from a particular locality, that locality should become an AA. This model of AA would thus be proportional to a bank's overall operations.

Capital One's recent purchase provides a good example of how our proposal would help more communities achieve CRA protection. In June 2011**,** Capital One purchased ING Direct USA (now "Capital One 360"). Although a significant portion of ING's business is Californiagenerated, it does not have physical branch locations here. Capital One thus evades CRA scrutiny in precisely the California neighborhoods where it is most needed.

We would not have to reinvent the wheel to do this. The former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks. Expanding AAs would increase much-needed community development financing, as well as home and small business lending.

Additional Suggestions for Improving CRA Regulation

Improve Data Reporting to Include Racial Demographics and Greater Geographic Detail

The agencies are missing an opportunity to assess the effectiveness of their proposed changes by not requiring additional data disclosure of CD lending and investing. For the past several years, Greenlining and other advocacy organizations have advocated for the agencies to publicly provide more detailed data on CD lending and investing on a census tract level or at least on a county level. Race/ethnicity data, in particular, would give a clearer picture of whether the financial needs of the entire community are being met. For example, African-Americans and Latinos are more likely to receive subprime loans. But without race-specific CRA data, we're less able to begin remedying these disparities.

The Home Mortgage Disclosure Act (HMDA) provides a model for loan-level data collection. Unlike other sources of data, HMDA provides information about borrower income, loan pricing, and race/ethnicity, in addition to the location of the property at the census tract level. This has allowed community organizations and the public to track changing patterns of mortgage lending for historically disadvantaged groups and low-income neighborhoods.

If more detailed county level data was available for CD financing, the agencies and the public at large could assess the effectiveness of any proposed changes to the regulation or Q&As. It is important to be able to determine whether the changes would stimulate more CD financing in rural counties and smaller cities, while ensuring that the current assessment areas do not experience significant declines in community development financing. Without this detailed data, it is difficult to quantify the success of the CRA and the agencies' enforcement.

Fix the Lending and Service Tests

The proposed Q&As do not address glaring deficiencies of the service test. While bank branches are closing, some large banks are now engaged in predatory lending. A more rigorous service test which assesses data on bank deposits in addition to bank branches in low- and moderate-income communities is urgently needed.

In addition, the existing Q&As regarding foreclosure prevention and loan modifications are not effectively stimulating large-scale foreclosure prevention activities. Reforms to the CRA regulation boosting the importance of foreclosure prevention and servicing must be undertaken.

Finally, the lending test provides consideration of loans without regard to whether the lending activities are appropriate. Therefore, a CRA examination also should include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help to meet community credit needs.

Loan Purchase Should not be Counted the Same as Loan Origination

Greenlining agrees with the NCRC's disapproval of CRA exams in which banks make few loans to low- and moderate-income borrowers but purchase several loans made to these borrowers from other banks. These loans are thus "recycled" instead of introducing new capital into communities that need it.

Making loans represents a more concerted effort to serve community needs than purchasing high volumes of loans. Existing Q&As warn banks against purchasing loans to "artificially inflate CRA performance." But since this behavior continues, we strongly recommend that the agencies strengthen the Q&A by stating that CRA examiners will separately evaluate originations and purchases, and will accordingly downgrade banks if the purchasing is conducted in a manner to inflate the CRA rating.

Strengthen Enforcement Mechanisms

One of the biggest risks to banks who receive poor CRA ratings is the reputational risk that is associated with not serving the needs of their communities. This risk is most often realized when banks with poor CRA ratings attempt mergers that would not serve the public interest. But today, the banking industry is extremely consolidated, and merger opportunities are proportionately scarcer. There are fewer opportunities for community organizations and the public to take banks to task for performing poorly on their CRA obligation.

Consequently, we suggest grading banks on a curve to increase competition for "Outstanding" ratings and decrease grade inflation. Regulators should limit outstanding ratings to no more than 20% of financial institutions above and below $5 billion in assets. In addition, a new category of "Outstanding plus" can be awarded to the 5% top performing institutions with $5 billion or more in assets.

Finally, to really put teeth on these regulations, the agencies should simply bar any mergers or acquisitions by any financial institution with a Low Satisfactory or lesser CRA rating, and give accelerated consideration in mergers to financial institutions that secure an Outstanding-plus rating. These measures would revitalize the CRA by helping enforce banks' affirmative legal obligation to serve the needs of their communities.

Conclusion

Three years after the summer 2010 hearings, during which the agencies received hundreds of comments, Greenlining is deeply disappointed that the agencies are proposing half measures in the form of Q&As. What low- to moderate-income communities actually needed is comprehensive reform of how the CRA is regulated. The banking industry has evolved rapidly over the decades; so should the CRA.

cc. National Community Reinvestment Coalition