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November 10, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW
Washington, DC 20219
regs.comments@occ.treas.gov
Docket ID OCC-2014-0021

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

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. OP-1497

Re: Community Reinvestment Act; Interagency Questions and Answers

Dear Sir or Madam:

Capital One Financial Corporation[1] ("Capital One") commends the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System, and the Federal Deposit

[1]Capital One financial Corporation (http://www.capitalone.com) is a financial holding company whose subsidiaries, which include Capital One, N.A. and Capital One Bank (USA), N. A., had $204.3 billion in deposits and $300.2 billion in total assets as of September 30, 2014. Headquartered in McLean, Virginia, Capital One offers a broad spectrum of financial products and services to consumers, small businesses and commercial clients through a variety of channels. Capital One, N.A. has more than 850 branch locations primarily in New York, New Jersey, Texas, Louisiana, Maryland, Virginia, and the District of Columbia. A Fortune 500 company, Capital One trades on the New York Stock Exchange under the symbol "COF" and is included in the S&P 1 00 index.

Insurance Corporation (collectively, the "Agencies") for continuing to look for ways to improve the implementation of the Community Reinvestment Act ("CRA") and for ongoing efforts to provide clarification to the existing Q&A document. We appreciate the opportunity to provide comments on key aspects of this important area of banking regulation.

The CRA has been very effective in encouraging banks to serve low- and moderate-income ("LMI") neighborhoods and individuals. We applaud the Agencies' efforts to expand evaluation criteria under the service test and to clarify definitions. We believe some of the proposed changes will enable banks to achieve even better results, and thus help ensure CRA remains a well-respected and sustainable law.

I. Access to Banking Services

Given the speed at which technological changes are altering how consumers bank, we strongly agree that consideration for newer delivery channels – especially digital channels – should receive greater consideration in the CRA evaluation. However, we urge caution in deciding what documentation would be necessary to demonstrate LMI customers are being served by these channels. Specifically, we urge the Agencies to limit the bank's burden of proof of service to LMI populations to current and well-defined practices applied to other areas on the basis of geographic penetration alone. As a matter of practice, the CRA has consistently recognized that individuals residing in LMI census tracts have a likelihood of being from LMI households. Historically, this has been an acceptable proxy in evaluating a bank's CRA performance. For example, the current methodology, which presumes branches situated in LMI census tracts serve primarily LMI households, confirms this methodology is an effective proxy.

For most institutions, mailing addresses are readily available for deposit customers. Customer mailing addresses can easily be geocoded. Institutions can then provide examiners with comparisons of channel usage by each census tract income category based on the geocoded addresses of its customer base. This process comports to the existing standards mentioned above and is the most reliable indicator of penetration into LMI areas.

Conversely, there can be significant challenges to demonstrating penetration into LMI households as contrasted with LMI areas. There are a number of reasons for this. First of all, institutions do not collect income information when opening deposit accounts. It could be counterproductive if banks began, or were required to collect, income information when opening accounts. A clear example of this exists in digital channels. Experience has shown that this access needs to be as simple as possible – the more questions a bank asks, the fewer people who will finish the account opening process. This dynamic may be especially true when asking for highly personal information like income, which may not be understood by customers as a necessary prerequisite to opening a deposit account (unlike seeking to obtain a loan). Many consumers also have a natural skepticism regarding privacy and security when entering into digital business transactions. Asking for income when opening a deposit

account could make consumers, both LMI and non-LMI alike, even more suspicious of the bank's motivation and raise unnecessary questions about the intended purposes for collecting such information. The ultimate consequence could be inadvertently discouraging customers to access mainstream financial services. An additional consideration, even if banks were successful in collecting income information from depositors, is that depository relationships can last a very long time, even decades. Therefore, it would not be long before the income information on record became stale, rendering any ongoing statistical analysis invalid.

For all these reasons, we urge the Agencies to limit the bank's burden of proof of service to LMI populations to current, reliable and well-defined practices applied to other areas on the basis of geographic penetration alone. Since digital and other newer delivery channels are simply another means of access to banking products and services, we see no reason why these channels should be held to a different standard than what is currently in use for traditional branch locations.

Question 5 asks whether the cost to consumers of alternative delivery systems should be evaluated relative to other delivery systems offered by: (i) the institution, (ii) other institutions in the institution's assessment area, or (iii) the banking industry generally. It may be reasonable to compare the cost of the institution's alternative delivery systems to its other delivery systems. However, it would be unreasonably burdensome to expect an institution to survey and monitor costs related to other institutions' delivery systems. For example, there are 214 other depository institutions in our New York – Northern New Jersey – Long Island market, alone. Therefore, we ask that the final Q&A clarify that any such evaluation be limited to comparing costs of an institution's own delivery systems.

II. Innovative or Flexible Loan Practices

We concur that adding examples of practices that are innovative and flexible can effectively supplement the Q&A. Our key concern, however, is that it be made clear in the Q&A that, should a bank choose not to engage in any of the programs and practices outlined in the existing or proposed examples, no explanation should be requested or required and there be no adverse consequences relative to the bank's performance. We note that the longer a list of qualified activities becomes, the greater the possibility that it will be interpreted as exclusive. We would recommend specific reference to the fact that the examples are examples only and are not meant to exclude other activities that meet the spirit and intent of the regulation. Specific language to add in this section could include something similar to the following: "none of these are construed as exclusive, and banks are not required to provide any of these specific practices or programs."

In reference to the Agencies' question on the use of alternative credit histories, so long as banks are not required to do so, we believe such practices, within safety and soundness guidelines, can be

effective in removing one of the barriers to home ownership for LMI individuals and as such, favorable CRA consideration is appropriate.

III. Community Development

A. Economic Development

In general we support the proposed changes to this section with certain exceptions. We are especially concerned about the last proposed addition, which would give credit for activities that support "federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons, to jobs, affordable housing, financial services, or community services." We believe this blurs the lines among the major community development subcategories (Affordable Housing, Community Services, Economic Development, Revitalization/Stabilization) without improving the definition of economic development in any meaningful way. If the intent is to acknowledge activities that benefit small businesses or improve access to jobs for LMI individuals as a direct result of the actions of an economic development initiative affiliated with federal, state, local or tribal governments, then we recommend the following language: "Federal, state, local, or tribal economic development initiatives that benefit small businesses or create or improve access to jobs for LMI persons."

We also are concerned about how a bank can effectively determine if the jobs created are actually "accessible" to LMI individuals, and that documentation requirements could become prohibitive. Accordingly, we recommend that if the activity, program or initiative takes place in or near to an LMI area,[2] it is reasonable to assume that the jobs created are accessible to LMI.

Question 11 asks what information examiners should use to determine whether the size and purpose tests have been met. We are concerned about the size test as it relates to qualified grants and community development services. For example, it is not realistic to request revenue data from attendees of a technical assistance seminar for small businesses. This is an area where documentation is difficult and time-consuming and where institutions, unfortunately, often weigh the cost versus the benefit and decide not to report such activities. Further, our efforts to serve small businesses, whether indirectly through partnerships with non-profits we fund or directly through the provision of technical assistance by our associates, attract the participation of truly small businesses, often very small and even microbusinesses. A common sense approach is needed and would be welcomed—we recommend that activities specifically aimed at supporting small business development should be presumed to be qualified unless there is evidence to the contrary.

[2] For example, proximity could be defined as census tracts within a one-mile radius.

B. "Green" Initiatives

As a strong proponent of environmentally sustainable practices, Capital One has a long history of supporting green initiatives, and we support the addition of an example in the Q&A. However, the proposed example is ambiguous and should be clarified. Specifically, our understanding of the intent of the addition is not to expand the definition of "community development" to include green initiatives, but rather to allow for additional qualitative consideration of such initiatives that are components of transactions that otherwise meet the existing definition of "community development." Therefore, we ask that the final Q&A confirm or correct our understanding. We also again urge the Agencies to add language in this section that makes it clear that "this list is not exclusive and a bank is not required to engage in any CD activities for the specific purposes noted herein."

C. Revitalization/Stabilization of Non-Metropolitan, Underserved Middle-Income Areas

Capital One strongly advocates for CRA consideration for improved access to communication networks, including broadband. However, we feel that limiting CRA consideration to activities that qualify only in non-metropolitan areas significantly reduces its effectiveness as a tool for community development. The future of the financial services industry's ability to deliver cost-effective retail banking services to LMI households largely hinges on the availability of affordable and convenient access to the broader digital economy. One current barrier to digital access is the monthly cost. If banks were encouraged to make investments that would improve affordability by either enhancing the infrastructure or adding competition, an important and crucial need existing in LMI communities would be well served. While we recognize that some underserved rural areas have greater need for such activities, this should not dictate the exclusion of other areas from CRA consideration. Under the Agencies' proposed definition of "innovative," activities undertaken in rural areas that currently have no access to digital services would likely also receive innovation consideration which could encourage banks to invest there. Accordingly, we support expanding this example to make it a qualified community development activity that benefits any area that includes LMI or underserved middle-income areas.

IV. Evaluating a Bank's Community Development Services

In our view, the CD services portion of the CRA has become unnecessarily complex and the documentation is a significant drain on resources that could otherwise be spent providing actual services to the community. We urge the Agencies to consider dropping the "provision of financial services" component in qualifying a CD service. Without diminishing the importance of financial services, we continue to believe that any activity serves a CRA purpose that a) supports affordable housing, b) provides community services that benefit LMI individuals, c) promotes economic development to support small businesses and small farms or d) revitalizes or stabilizes LMI areas. We believe any activity that supports a CD-qualified organization or its clients, or provides a direct service

to LMI individuals, should receive consideration and examiners should be able to distinguish the level of consideration based on impact and responsiveness to LMI needs identified through their non-profit partners.

We agree that any information the institution chooses to provide should be considered by the examiners. We prefer the most direct method of counting the hours spent by employees in service as the baseline review, with a review of responsiveness, innovation, leadership, complexity and flexibility also taken into account to the extent that the institution chooses to provide such information. Large banks must spend a significant amount of time and effort to track and document CRA services. Accordingly, the Agencies should work with banks to ensure the documentation requirements are not overly prescriptive and commensurate with the impact on the rating so that bank resources can be more appropriately applied to actually serving the LMI community.

V. Responsiveness and Innovation

One of the most challenging aspects of the CRA for all stakeholders is how qualitative factors do and should impact the CRA rating. While we appreciate the effort to better define terms in the Q&A, we are concerned there may be unintended consequences. For example, there is a natural and unavoidable tension with regard to CRA between clarity and flexibility. The danger in making the definitions too prescriptive might result in less flexibility in their traditional interpretation or in the future of evolution of banking. Likewise, definitions with much specificity often lead to increased documentation requirements in order to achieve higher qualification thresholds. In addition, the last bullet in Section .21(a)-3 states that one type of information examiners may consider is "the results of an assessment, prepared by an institution in the normal course of business, of the credit and community development needs in the institution's assessment area(s) and how the institution's activities respond to those needs." Although most financial institutions, including Capital One, continuously identify LMI needs and responses to those needs in tandem with our non-profit community partners, without very clear and strong language, this could be interpreted to require that a bank maintain a formalized written needs assessment and could be overly prescriptive, increase documentation burdens and is contrary to what is stated in .21(b)(2)-1. Thus, we recommend this language not be included in the final Q&A.

While no bank can create an effective CRA program without having knowledge of credit and community development needs within its assessment area, the process of documenting those needs can take many forms. Requiring a formal version of such an assessment could add a substantial burden of documentation. We are also concerned that banks could be penalized for not addressing all needs identified in their needs assessment document. The reality is that all banks bring different capabilities and CRA strategies to the table based on their strategic objectives, operational constraints and capacity. With actual community needs far outstripping any one bank's capacity to address them all,

we worry that examination staff may develop unreasonable expectations based on a needs assessment. Given the potentially burdensome documentation and possibility of misinterpretation by examiners, we strongly urge the last bullet be removed from this section.

Proposed Q&A .21(a)-3 states that "activities are particularly responsive to community development needs if they benefit LMI individuals, LMI geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies." This essentially is a restatement of nearly all the possible beneficiaries (individuals and geographies) of community development; therefore, it follows that just about any activity that qualifies as community development would be considered "particularly" responsive. If this was not the Agencies' intent, the meaning of the proposed language should be clarified. On the other hand, if this was the Agencies' intent, we recommend efforts that support small businesses be explicitly included in the proposed language.

We are in general agreement with the proposed definition of "innovative" and applaud the Agencies' efforts in this regard. However, we believe the reference to institutions which "do not have the capacity to be market leaders" is overly broad, open to wide interpretation, and contrary to the intention of this section. Further, regardless of an institution's size or capacity there can be other constraints to providing certain community development activities in an assessment area. The extent that banks with "capacity" find ways to expand CD activities into an assessment area where such activities were not previously undertaken should also be considered to meet the definition of innovative. For example, if a bank with "capacity" invests in a Low-Income Housing or New Markets Tax Credit in an assessment area for the first time by any institution, this should be considered innovative. In these instances, the practice (e.g. tax credit financing) should not cease to be innovative because financing such developments has become more "standard" for the bank. Clearly, the community is benefiting from such new activity which is unquestionably innovative from its perspective. Further, an institution's capacity is addressed through the performance context and is currently taken into overall account in assessing qualitative factors. Accordingly, we recommend that the reference to capacity be removed from this section.

Question 30 asks whether it is clear that innovative activities are not required. We suggest adding a reference to the existing Q&A .28-1, which clearly states that such activities are not required for a "satisfactory" or "outstanding" CRA rating.

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In closing, we would like to reiterate two overarching themes in our comments. First, the impact on documentation requirements, explicit or implicit, should always be considered when amendments to the Q&A are proposed. The CRA is a regulation that imposes significant documentation and other requirements on institutions; any additional recordkeeping requirements should be imposed only if

they are expected to result in significant public benefit. Second, there should be clear language stating an institution is not required to engage in any of the activities appearing in a list of examples, and the list is not intended to be exclusive or exhaustive. Alternatively, a statement to this effect preceding all the guidance in the Q&A document could suffice.

We appreciate the Agencies' efforts to clarify these matters. However, an already complex regulation may inadvertently become even more so as the Q&A continues to expand if appropriate consideration to this risk is not given. We are concerned with the increasing difficulty in trying to keep up with the myriad of technical provisions and how, in practice, they are interpreted by examination staff.

Thank you for the opportunity to comment on the proposed changes to the CRA Q&A.

Sincerely,

James V. Matthews
Senior Vice President, CRA Compliance
Corporate CRA Officer