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To: Attn: Docket No. 2001-49  
Regulation Comments, Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW.  
Washington, D.C. 20552

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Comments Regarding the CRA Regulatory Treatment of:

**U.S. Small Business Administration  
Guaranteed Loan Pool Certificates**

**U.S. Small Business Administration  
Guaranteed Interest Certificates**

**U.S. Small Business Administration (SBA) Guaranteed Loan Pool Certificates (GLPC's)** are modified pass-through securities that are assembled using the guaranteed portion of loans guaranteed through the SBA's 7(a) loan guaranty program. Investors purchasing a fractional interest in an SBA Pool own an undivided interest in each of the loans in that pool. Federal regulators generally require depository institutions to carry SBA GLPC's in their investment portfolio's for call report purposes.

**U.S. Small Business Administration (SBA) Guaranteed Interest Certificates (GIC's)** represent beneficial ownership of the entire guaranteed portion of a specific, individual SBA loan guaranteed through the SBA's 7(a) loan guaranty program. Investors can not purchase a fractional interest in the GIC's. Federal regulators generally require depository institutions to carry SBA GIC's in their loan portfolio's for call report purposes.

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**Background**

SAMCO Capital Markets is one of approximately ten market-makers currently active in the secondary market for loans guaranteed through the SBA's 7(a) loan guaranty program. The company is also an active SBA approved pooling agent. Personally, I have specialized in the SBA secondary market since 1989.

In the course of marketing the SBA Guaranteed Interest Certificates (GIC's) and SBA Guaranteed Loan Pool Certificates (GLPC's) that are offered for sale, SAMCO often encounters depository institutions seeking to improve their CRA performance. We have been asked time and time again whether such investments have a positive influence on an institution's CRA rating. Unfortunately, this has become an increasingly gray area.

In my personal experience, some depository institutions receive CRA benefits for their SBA investments over a long period of time. Others have been flatly refused any CRA benefit. Still others have received a benefit for some period of time, only to have the benefit withdrawn at a later date. So, asked whether or not investors can expect to receive some CRA benefit for their SBA 7(a) investments, we can only say that it depends on which CRA examiner is in your bank at any particular time. I believe that such inconsistencies are unfair to all parties and should be addressed.

The purpose of my comments are to bring this inconsistent treatment to your attention and to propose that you provide an automatic presumed benefit for SBA GIC's and SBA GLPC's.

#### **Automatic Presumed Benefit**

Other SBA investments, such as those associated with Small Business Development Corporations (SBDC's), Small Business Investment Corporations (SBIC's) and the SBA's Venture Capital program enjoy the status of an automatic presumed benefit. The basis of this status is essentially that these SBA programs are generally beneficial to low-to-moderate income individuals both directly as borrowers and indirectly as employees of the borrowers. Investments associated with these SBA programs are considered to be supportive of the objectives of the Community Reinvestment Act and, therefore, are given the automatic presumed benefit.

The same sound logic can and should be applied to the Small Business Administrations' most active program: the 7(a) loan guaranty program.

#### **How Low-to-Moderate Income Individuals and/or Areas Benefit from the U.S. Small Business Administration 7(a) Loan Guaranty Program**

To appreciate the impact the SBA 7(a) loan guaranty program has on low-to-moderate income individuals and/or areas, please consider the following data taken from the SBA's website:

*The U.S. Small Business Administration, established in 1953, provides financial, technical and management assistance to help Americans start, run and grow their businesses. With a portfolio of business loans, loan guarantees and disaster loans worth more than \$45 billion, in addition to a venture capital portfolio of \$13 billion, SBA is the nations largest single financial backer of small businesses. Last year, the SBA offered management and technical assistance to more than one million small business owners. The SBA also plays a major role in the government's disaster relief efforts by making low-interest recovery loans to both homeowners and businesses.*

*America's 25 million small businesses employ more than 50 percent of the private work force, generate more than half of the nations' gross domestic product and are the principal source of new jobs in the U.S. economy.*

#### ***Small Business "Vital Statistics"***

*Did you know that...*

- *There are approximately 25 million small businesses in the U.S.?*
- *New business formation reached another record year in 1998?*
- *There were 898,000 new employer businesses in 1998 - the highest ever and a 1.5 percent increase over the record of 889,000 new businesses in 1997?*
- *In 1998, seven of the ten industries which added the most new jobs were sectors dominated by small businesses?*
- *Small businesses hire a larger portion of employees who are younger workers, older workers, women or workers who prefer to work part-time?*
- *Small businesses provide 67% of workers with their first jobs and initial on the job training in basic skills?*
- *Small business bankruptcies are the lowest in 19 years?*

*Small businesses...*

- *Provide approximately 75% of the net new jobs added to the economy.*
- *Represent 99.7% of all employers.*
- *Employ 53% of the private work force.*
- *Provide 47% of all sales in the country.*
- *Provide 55% of all innovations.*
- *Account for 35% of federal contract dollars.*
- *Account for 38% of jobs in high technology sectors.*
- *Account for 51% of private sector output.*
- *Represent 96% of all U.S. exporters.*

Clearly, American small businesses are crucial to the interests of low-to-moderate individuals. Small businesses are the principal source of new job creation in this country. Small businesses provide 67% of workers with their first jobs and initial on-the-job training in basic skills. The Small Business Administration is the nations' largest single financial backer of small business.

The SBA 7(a) loan guaranty program provides businesses long term capital to that would not otherwise be available. The secondary market was created to increase the attractiveness of small business lending to the lending community by allowing lenders to sell off their SBA 7(a) guaranteed portions. The SBA secondary market provides approximately \$3 billion of liquidity to the SBA 7(a) lending program each year. This liquidity allows lenders with strong demand to continue to lend in their markets. Lenders who do not have strong demand are able to support the SBA programs through their investments. The purchasers of SBA GLPC's and SBA GIC's, while not directly involved in the lending process, are, in fact, a major support for the SBA lending programs.

**Conclusion**

Absent any clear regulatory direction, CRA field examiners must focus on the specific underlying borrower for a given SBA loan. They want to know if that particular borrower falls into the low-to-moderate income category. Because purchased SBA GIC's and GLPC's are unconditionally guaranteed by the full faith and credit of The United States, investors are not required to make a determination as to the credit worthiness of the underlying borrowers. As such, we do not see credit files on the borrowers in the secondary market. For this reason, it is impractical to apply the low-to-moderate income test to each SBA borrower for the purpose of determining whether or not a specific SBA 7(a) guaranteed loan has benefited a specific low-to-moderate income person or persons. CRA field examiners are not in a position to qualify SBA 7(a) investments on the basis of the positive effects of the overall program. Regulatory clarification is needed to achieve this.

The SBA 7(a) program benefits untold thousands of low-to-moderate income persons year after year. The SBA 7(a) loan guarantee program is vital to the interests of low-to-moderate income persons in our nation. The SBA secondary market provides approximately \$3 billion of liquidity to the SBA 7(a) program each year. Current CRA regulations do not recognize SBA 7(a) loans as necessarily beneficial to low-to-moderate income individuals. We believe that investments associated with the 7(a) program, by far the most active of SBA's programs, should be treated on an equal footing with the SBDC, SBIC and SBA Venture Capital programs.

Further, the importance of the role of small businesses as leaders in new job creation and basic skills training is greater than ever in the wake of the tragic events of September 11<sup>th</sup>.

For these reasons, we at SAMCO Capital Markets urge you to encourage depository institutions to support the secondary market for SBA 7(a) guaranteed loans by providing an automatic presumed benefit for purchased SBA Guaranteed Loan Pool Certificates and SBA Guaranteed Interest Certificates. In addition to

creating a needed consistency to the treatment of such investments, such a rule would appreciably increase liquidity to the SBA 7(a) program, further benefiting low-to-moderate income individuals across the nation.

I am very grateful for the opportunity to comment on this very important matter. Please do not hesitate to contact me if I may be of any assistance to you in considering this issue.