America's Community Bankers Shaping Our Future

April 6, 2004

Mr. Robert E. Feldman Executive Secretary Attention: Comments/Executive Secretary Section Federal Deposit Insurance Corporation 550 17th Street, NW Washington, DC 20429	Regulation Comments Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW Washington, DC 20552 Attention: No. 20004-04
Communications Division Public Information Room Office of the Comptroller of the Currency 250 E Street, SW, Mailstop 1-5 Washington, DC 20219 Attention: Docket No. 04-06	Ms. Jennifer J. Johnson Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551 Attention: Docket No. R-1181

Re: Community Reinvestment Act Regulations
69 FR 5729 (February 6, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")[1] welcomes the opportunity to comment on the proposal issued by the federal banking agencies[2] to amend the regulations that implement the Community Reinvestment Act ("CRA").[3] The proposal would amend the definition of "small institution" to mean an institution with total assets of less than $500 million, without regard to any holding company assets. The proposal also would provide that an institution's CRA performance evaluation would be adversely effected by evidence that an institution or any of its affiliates, the

[1] America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than $1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.
[2] The proposal has been issued jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, collectively referred to as the federal banking agencies.
[3] 69 Fed. Reg. 5729 (Feb. 6, 2004).

loans of which have been considered as part of the institution's evaluation pursuant to the regulations, has engaged in discriminatory, illegal or abusive credit practices.

ACB Position

ACB supports the efforts of the federal banking agencies to review and update the implementing regulation for the CRA. The financial services marketplace has evolved significantly since the enactment of the CRA in 1977 and since the most recent revisions to the regulation were finalized in 1995. We believe that there are a number of additional areas that the federal banking agencies should consider in order to bring the regulation up to date. ACB continues to suggest that the federal banking agencies seek to provide guidance to the industry that will help reduce the burden of compliance with the regulations for all institutions. We strongly urge the federal banking agencies to continue the review of the regulation, but we also urge an ongoing review of the guidance to insured depository institutions in the form of interagency questions and answers. Further, the federal banking agencies have indicated that a review and revision of the examiner guidance is underway. We urge that the examiner guidance be reviewed regularly. Finally, ACB believes there have been significant changes in the marketplace, and to the extent that the agencies are unable to revise the regulation to accommodate these changes, they should consider working with Congress to amend the statute.

ACB strongly supports the proposed amendment to the definition of "small institution." We suggest that the federal banking regulators consider amending the definition to mean an institution with total assets up to $1 billion. Currently, community banks that are between $250 million and $1 billion in total assets are measured by the same three-part examination that is used for banks many times their size. We believe that the streamlined examination for small institutions is a much more appropriate way to measure compliance by small institutions up to $1 billion in assets. Finalizing this change would provide needed regulatory burden relief for those institutions.

ACB has concerns about the second part of the proposal. While we support strong and effective enforcement of all consumer protection laws and believe that violations of these laws frequently have an impact on the ability of the institution to serve the credit needs of the community, we do not believe that listing all of the possible laws in the CRA regulation will accomplish the goal of eliminating abusive lending practices. Particularly because the current regulation addresses evidence of discriminatory or other illegal credit practices, and the current interagency question and answer document specifically identifies several consumer protection laws, we believe that adopting this proposed change will be an additional burden on institutions. We also are concerned that the proposal to make a judgment about affiliate lending activities that have been counted in the institution's examination results, but are activities that are outside the institution's assessment area, is not appropriate.

Small Bank Definition

As the federal banking regulators note, given the changes in the banking industry since the promulgation of the final rule, the proposal to amend the definition of small bank to include banks with assets of up to $500 million does not decrease the assets in the industry that will be required to be examined using the three-part lending, investment, and services tests. If the proposed change is adopted, almost 90 percent of the assets of the industry will continue to be examined using the large bank tests.[4] ACB strongly supports this proposed change. We urge the federal banking regulators to further amend the definition to include institutions with assets up to $1 billion. We do not believe that insured depository institutions that are between $250 million in assets and $1 billion in assets should be examined using the same criteria as those institutions with tens or hundreds of billions in assets.

Community banks cannot exist without serving the credit needs of their communities. Lending to families and small businesses is the purpose of these institutions. One of the stated goals of the revisions of the regulation in the mid 1990's was to reduce the paperwork associated with measuring CRA compliance while rewarding performance. For small institutions, the streamlined examination procedures represent a reduction in paperwork and therefore an addition to the resources that can be spent working with customers and developing products that really do meet the needs of the community.

Credit Terms and Practices

The second significant proposed change to the regulation that implements the CRA is intended to address abusive lending practices. The proposal would amend the current regulation to provide that evidence of a violation of specific consumer protection laws would have an adverse impact on the evaluation of an institution. The proposal further provides that evidence of violations of these laws by affiliates whose activities have been considered as part of the evaluation will also result in an adverse impact on the institution's evaluation.

In general, ACB opposes using the CRA implementing regulation as an enforcement tool for other federal and state laws. The ratings afforded depository institutions as part of the examination process should reflect whether a depository institution is successful in meeting the credit needs of its communities. We believe that the CRA examination process should not be used as an enforcement tool or as a remedy for violations of other federal and state laws, especially those laws that have little bearing on the credit practices of depository institutions in low- and moderate-income communities. The proposal expands not only the scope and applicability of the CRA but the remedies under these other laws beyond what was intended by Congress and state legislatures.

Because the CRA was enacted to help rectify the abuses caused by past credit discrimination, the consideration of an institution's violation of a credit discrimination law could arguably have some relevance to an institution's CRA evaluation. Most of the laws enumerated in the proposal extend beyond discriminatory credit practices and do not address how well an institution is serving the credit needs of its community. The agencies have indicated in their "Interagency Questions and Answers Regarding Community Reinvestment"[5] that they would consider violations of the laws enumerated in evaluating an institution's CRA performance. ACB suggests

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[4] Id at 5738.
[5] 66 Fed. Reg. 36620 (July 12, 2001).

that any list of regulation violations which is considered as part of an institution's CRA examination should remain in the guidance or question and answer documents. This would give the agencies more flexibility to amend the list and to explain the rationale of including the other laws.

We are especially concerned about language in the preamble indicating that "evidence of violations of other applicable consumer protection laws affecting credit practices, including State laws if applicable, may also adversely affect the institution's CRA evaluation."[6] Such an interpretation of the existing provision would be an expansion of the agencies' guidance, which provides that violations of other provisions of consumer protection laws generally will not adversely affect an institution's CRA rating.

We also are concerned with language in the preamble that seems to indicate an institution need not have violated a law or that the conduct need not be illegal for the institution to have its CRA rating adversely affected.[7] We believe the proposal should be clarified to provide that conduct must be illegal before an institution's CRA performance would be affected. For example, ACB is concerned that the fact that an institution has been sued for a violation of section 8 of RESPA might be considered credible evidence or that settlements involving alleged violations of these laws might be considered credible evidence. Another example is whether technical violations of these laws are deemed to be credible evidence. There is much controversy over what conduct is prohibited under these laws from the regulators charged with interpreting these statutes. To have the federal banking agencies develop their own administrative law of what constitutes a violation of these technical statutes would be problematic and counterproductive to enforcement.

We also believe that isolated incidents of violations should not affect an institution's CRA rating, and suggest that an institution's CRA rating be negatively affected if the institution engages in a pattern or practice of illegal behavior. Accordingly, ACB recommends that the regulation explicitly provide that only substantive violations of laws that evidence a pattern or practice of illegal behavior will adversely impact an institution's CRA performance evaluation.

Conduct Outside an Institution's Assessment Area

The proposal would expand the current regulation by providing that the conduct causing the violation need not occur in the institution's community or assessment area.[8] Under such a scenario, an institution whose assessment area is the small town in which it has all its branches could have its CRA rating be adversely affected because of a mortgage loan it originated in a neighboring town.

ACB has longstanding concerns about the assessment area definition and determinations that are based on the assessment area. We strongly urge the federal banking agencies to consider the assessment area in the context of changes in the financial services market place and the evolution of delivery channels for products. We believe that rather than making a change such as the one

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[6] 69 Fed. Reg. 5740
[7] Id.
[8] Proposed revised section __.28(c).

proposed the federal banking agencies should review the assessment area issue in its entirety. Changes should be proposed that reflect changes in the way that insured depositories are providing services and in the way that the institutions themselves are defining their communities. If such changes cannot be made without statutory change, we urge the agencies to work with Congress to amend the statute.

Further, we do not believe that the activities of an affiliate that have occurred outside of the assessment area should be considered in making the determination of whether the institution is engaged in discriminatory or abusive lending. In the preamble the agencies ask whether the agencies should provide that evidence of discriminatory, other illegal or discriminatory credit practices by an affiliate whose loans have been considered in the institution's evaluation will adversely affect the institution's rating, regardless of whether the activities occurred in the institution's assessment areas.[9] Whether and to what extent the activities of an affiliate should be considered is a separate question that the agencies do not propose to change. The extent to which an affiliate's activities outside the assessment area are considered for any purpose, even as evidence of abusive practices, should be reviewed in the context of the broader question of assessment areas and affiliate lending.

Questions and Answers

ACB urges the federal banking agencies to continuously review the guidance that is provided as part of the questions and answers. In several areas, we believe that clarifications of the existing questions and answers would be a useful update without having to amend the regulation.

Finally, ACB suggests a simplification that would benefit both a federal banking agency and companies with multiple depository institution subsidiaries. It would allow the agency to conduct a single exam covering lending by both a parent and subsidiary if both are insured depositories of the same charter type. The appropriate agency could perform a combined exam and issue the rating to each institution.

For example, the response to a question could be amended to provide:

Section ___.22(b)(2) & (3) – 3: Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?

A: Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have affiliate lending considered in the remainder of the lending test evaluation, **except when performing a [combined] [consolidated] evaluation of the lending in the common assessment area(s) of a parent institution and its designated operating subsidiary institution at the election of the two institutions.** [*strike* However, e]**E**xaminers may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

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[9] 69 Fed. Reg. 5740.

Proposed addition to ___.22 lending test.

(d). *Lending by parent and operating subsidiary financial institutions.* At the request of both an insured depository and its operating subsidiary institution, the agency may perform the lending test on a consolidated basis in any common assessment area subject to the following constraints:

(1) The parent and its operating subsidiary may not claim any loan origination or loan purchase more than once; and

(2) No other affiliate of the parent and its operating subsidiary may claim a loan origination or loan purchase claimed by the parent/operating subsidiary.

[(3) Each institution will receive the same lending performance rating as the other.]

Conclusion

ACB strongly supports the agencies in the review of the CRA implementing regulations. We believe that the current regulations should be reviewed and updated as the industry changes and lending and deposit gathering evolve. We urge the agencies to adopt the amendment to the definition of a small institution and we strongly suggest that this definition be reviewed regularly as the institution continues to consolidate. Community banks with up to $1 billion in assets should not be examined using the same standard as those with billions of dollars in assets.

We appreciate the opportunity to comment on this important matter. Please contact the undersigned at cbahin@acbankers.org or (202) 857 3121 if you have any questions about this letter.

Sincerely,

Charlotte M. Bahin

Charlotte M. Bahin
Senior Vice President
Regulatory Affairs