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Congress of the United States

Washington, DC 20515

March 17, 2004

The Honorable Alan Greenspan
Chairman of the Board of Governors
Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable John D. Hawke, Jr.
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable James E. Gilleran
Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Sirs:

We are writing to submit our joint comments regarding the agencies' proposed rule published in the February 6, 2004, *Federal Register* to update implementation of the Community Reinvestment Act (CRA). We appreciate the opportunity to comment on the agencies' proposal and respectfully request your consideration of our comments as the rule is finalized.

Small Institutions Streamlined Exam

The agencies propose to expand the number of banks and thrifts that qualify for examination under the streamlined CRA process. We commend the agencies for proposing this expansion as it is well known that small institutions incur a disproportionately high regulatory cost when subjected to the large retail institution exam. However, we believe the agencies must consider additional relief in this area than has been proposed.

Under current rules, only those institutions with less than $250 million in assets being independent or affiliated with a holding company with less than $1 billion in assets qualify for the streamlined examination process. The agencies propose to increase the asset size limitation to $500 million and eliminate the holding company restriction.

The agencies note that raising the asset limit to $500 million will have little material impact on the amount of total assets currently covered by the large retail institution exam, but will reduce by approximately half the number of institutions subject to such review.

Specifically, the agencies write:

> "Raising the asset threshold to $500 million...would approximately halve the number of institutions subject to the large retail institution test (to roughly 11% of all insured depository institutions), but the percentage of industry assets subject to the large retail institution test would decline only slightly, from a little more than 90% to a little less than 90%" *Federal Register*, Vol. 69, No. 25 (p. 5738)

We concur with the agencies' determination to ensure the vast majority of industry assets remain subject to the large retail exam. However, we note that increasing the exemption amount from $500 million in assets to $1 billion in assets accomplishes this same purpose.

Our analysis of available information shows that as of December 31, 2003, the Federal Deposit Insurance Corporation insured 9,182 banks and thrifts representing $9 trillion in industry assets (FDIC Quarterly Banking Profile, Fourth Quarter 2003). Of these institutions, 8,088 had total assets $500 million or less while 8,612 had total assets of $1 billion or less. Further, institutions with $500 million or less in assets account for $1.03 trillion in assets, or 11 percent of total industry assets. The data also showed that institutions with $1 billion or less in assets account for $1.38 trillion in assets or 15 percent of total industry assets.

Under the agencies' proposal, approximately $8.05 trillion in industry assets will remain under the large retail exam. If the $1 billion threshold is adopted, approximately $7.68 trillion will remain under the large retail exam. This is a difference of only 524 institutions and $362 billion of industry assets.

Increasing the asset threshold for the large retail institution exam to $1 billion would not have a significant impact on the total amount of assets nor the total number of institutions covered by the exam. Such an amendment will provide relief to an additional 524 institutions while ensuring that 85 percent of total industry assets are covered under the large retail exam. Accordingly, we strongly encourage the agencies to raise the threshold to $1 billion.

Investment Test

The agencies propose to address concerns with regard to the investment test in two principal ways. First, by increasing the number of institutions that qualify for the streamlined CRA exam, the number of institutions subjected to the investment test will be reduced. Secondly, the agencies propose to clarify the application of the investment test through additional guidance.

The agencies noted that several commenters raised issues with regard to the investment test. Many expressed frustration that certain activities fostering community development were excluded from consideration of institutions' CRA-related investment activities while others discussed the subjective manner in which institutions' investments have been judged as "innovative or complex."

Decreasing the number of institutions subjected to the investment test may decrease the number of these complaints but does little to correct identified problems. Likewise, providing additional guidance to institutions that remain captive to the subjective judgment of examiners offers only modest certainty to the examination process. Clarifying CRA regulations on these important issues will give certainty to institutions, community organizations and units of local government with an interest in CRA qualifying activities.

Expanded definition of "community development"

The current definition of community development ignores the myriad development projects that promote and stabilize communities. Such activities include, but are not limited to the revitalization or stabilization of communities, financing of environmental remediation efforts, financing of wastewater facilities, financing of infrastructure, financing of education facilities and financing of other similar projects vital to communities. In many instances, such projects languish due to a lack of sufficient local, state and federal resources. Expanding the definition of community development may provide the resources to make such projects economically feasible, thereby improving the community for all residents.

The agencies noted the concerns of several commenters expressing significant difficulty in making qualified investments due to a lack of viable opportunities, while others discussed a need to simply make the investments regardless of the impact of the investment on the community. The agencies write:

> "Some noted that intense competition for a limited supply of community development equity investments has depressed yields, effectively turning many of the investments into grants; some claimed that institutions had spent resources transforming would-be loans into equity investments merely to satisfy the investment test; and some expressed concern that institutions were forced to worry more about making a sufficient number and amount of investments than about the effectiveness of their investments for their communities." *Federal Register*, Vol. 69, No. 25 (p. 5733)

Institutions should never be forced by regulation to operate in an unsafe or unsound manner; yet, it would seem the current definition of community development lends itself to this very result. Furthermore, the efficient deployment of capital is essential if CRA is to achieve the public policy goals for which it was enacted. Regulation must not prevent nor provide a disincentive for institutions to participate in opportunities that will have the greatest impact on their communities. Therefore, we strongly urge the agencies to adopt an expanded definition of the term "community development" that maximizes the investment test's impact on communities nationwide.

It is important to note that we believe institutions must be given additional options in the implementation of the investment test. However, this flexibility should not be implemented in a manner that adds to the existing CRA burden. No institution should be

forced to involve itself in all aspects of an expanded list of approved community development activities. Rather, institutions should be granted the option of participating in a broader array of community development activities.

Incentives for exempted institutions to continue investment activities

As more institutions are exempted from the large retail exam, fewer institutions will be examined for significant CRA investment activities. We strongly believe the existing incentive program should not only be retained, but also enhanced to ensure that demands for capital are met in communities served by exempted institutions. While lending must remain the central criteria by which exempted institutions are rated under CRA, we urge the agencies to provide additional incentives for such institutions to continue CRA investment activities.

Clarify the terms "innovative and complex"

As the agencies note, several commenters criticized the ambiguous nature of the terms innovative and complex as related to CRA investment activities. Although the agencies considered alternatives to the terms, no changes have been proposed. Rather, the agencies have opted to develop additional guidance for examiners and institutions.

We encourage the agencies to consider the impact of an investment an institution makes rather than the complexity or uniqueness of the transaction. The purpose of CRA, as the agencies note, was not to force institutions to make loans or investments that will jeopardize safety and soundness. Institutions that fulfill the requirements and spirit of CRA through economically sound investments must receive full credit irrespective of the "innovative or complex" characteristics of those transactions.

If the agencies opt to retain the terms innovative and complex, we strongly urge the terms be clearly defined through agency guidance. Institutions need regulatory certainty in order to comply with CRA. It is evident from the joint notice of proposed rulemaking that a significant number of institutions submitted comments regarding the ambiguous and subjective meaning of these terms. While the agencies rightly note that exempting a greater number of institutions from the investment test will bring relief, this offers no relief for large retail institutions. We urge the agencies to address these concerns to the greatest extent possible and provide large retail institutions with the necessary regulatory certainty to fulfill their obligations under the investment test.

We appreciate the effort the agencies have made to update and improve regulations implementing CRA. We urge you to consider our comments and look forward to working with you to finalize a rules change that is fair to financial institutions and that maximizes the impact of CRA activities in communities across the nation.

Sincerely,

Richard H. Baker

Spencer Bachus

Walter Jones

Doug Ose

Ed Royce

Ron Paul

Jeb Hensarling