April 6, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
Docket No. R-1181

Communications Division
Office of the Comptroller of the Currency
Docket No. 04-06

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation

Chief Counsel's Office
Office of Thrift Supervision
No. 2004-04

Re: Proposed Revisions to the Community Reinvestment Act Regulations

Dear Sir/Madam:

We respectfully submit the following comments regarding the proposed revisions to the Community Reinvestment Act regulations on behalf of the banks and banking industry in Utah. This letter is submitted on behalf of the bank members of the Utah Bankers Association ("UBA"). UBA is a trade association that has represented the banking industry in Utah since 1910. Its members include national banks, Utah chartered banks, savings banks and FDIC insured industrial banks. All UBA member banks currently have satisfactory or outstanding CRA ratings.

PRELIMINARY STATEMENT

Utah bankers have always recognized the importance of the products and services they provide to the health and vitality of the communities where they live and work. Access to adequate financial resources is necessary for a community or a group of people to thrive. In return, a thriving community produces the best opportunities for a bank to grow and thrive. Diligently serving the needs of the whole community results in a virtuous cycle of increasing deposits, loan demand, and needs for other financial products and services, which enables the bank to grow and support further economic development in the community. That represents community reinvestment in its purest form and essentially describes the history of banking in this nation. We believe this virtuous cycle of banks supporting communities and communities supporting banks has played a fundamental role in the economic development of this nation. Regardless of changes in the marketplace and the economy in the future, one thing that will never change is the primary importance of ensuring that every community has access to the economic resources it needs to develop properly.

Before addressing specific subjects, we would like to review the overall purpose and goals of CRA to provide a framework for the comments that follow. The

Community Reinvestment Act in effect today was initially designed to stop the practice of redlining. Community and government leaders realized that redlining produced a vicious cycle that only exacerbated the economic problems in those areas. They wanted to ensure that creditworthy borrowers could obtain loans and other resources needed to help rebuild those areas. The intent was not to make the banks responsible for rehabilitating those areas. Banks were only prohibited from denying a loan because of the area in which the loan proceeds would be used. We believe that is a good and necessary program.

The concern most often expressed regarding CRA is the tendency to require more than programs to ensure that a bank is serving the needs of all creditworthy borrowers in its community. A bank's primary role and responsibility is to provide a safe place to deposit money and to lend those funds back into the community.

SUMMARY OF COMMENTS

Our specific comments include the following:

- Support of the agencies' proposal to enlarge the numbers of banks and savings associations tht will be examined under the small institution Community Reinvestment Act (CRA) examination.

- Opposition to the agencies' proposal to distinguish loan purchases from loan originations in a public evaluation's display of loan data.

- Opposition to the agencies' proposal to overlay compliance with other banking laws into the CRA regulatory framework through the consideration of credit terms and practices.

- Opposition to the agencies' proposal to increased disclosure of loan data at the census tract level

- Comments on the qualitative/quantitative standards issue.

- Comments on the proposal regarding future guidance on the investment test

RECOMMENDATIONS

1. **"Small Institution" –** The Agencies propose to increase the asset threshold from $250 million to $500 million and to eliminate any consideration of whether the small institution is owned by a holding company. This proposal is clearly a major step towards an appropriate implementation of the Community Reinvestment Act and should greatly reduce regulatory burden on those institutions newly made eligible for the small institution examination, and we strongly support both of them.

When the CRA regulations were rewritten in 1995, the banking industry recommended that community banks of at least $500 million be eligible for a less burdensome small institution examination. The most significant improvement in the new regulations was the addition of that small institution CRA examination, which actually did what the Act required: had examiners, during their examination of the bank, look at the bank's loans and assess whether the bank was helping to meet the credit needs of the bank's entire community. It imposed no investment requirement on small banks, added no data reporting requirements on small banks and it created a simple, understandable assessment test of the bank's record of providing credit in its community. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

Since then, the regulatory burden on small banks has only grown larger, including massive new reporting requirements under HMDA, the USA Patriot Act and the privacy provisions of the Gramm-Leach-Bliley Act. But the nature of community banks has not changed. When a community bank must comply with the requirements of the large institution CRA examination, the costs to and burdens on that community bank increase dramatically. This imposition of a dramatically higher regulatory burden drains both money and personnel away from helping to meet the credit needs of the institution's community.

As the Agencies state in their proposal, raising the small institution CRA examination threshold to $500 makes numerically more community banks eligible. However, in reality raising the asset threshold to $500 million and eliminating the holding company limitation would retain the percentage of industry assets subject to the large retail institution test. It would decline only slightly, from a little more than 90% to a little less than 90%. That decline, though slight, would more closely align the current distribution of assets between small and large banks with the distribution that was anticipated when the Agencies adopted the definition of "small institution." Thus, the Agencies, in revising the CRA regulation, are really just preserving the *status quo* of the regulation, which has been altered by a drastic decline in the number of banks, inflation and an enormous increase in the size of large banks. We believe that the Agencies need to provide greater relief to community banks than just preserve the *status quo* of this regulation.

We recommend raising the asset threshold for the small institution examination to at least $1 billion. Raising the limit to $1 billion is appropriate for two reasons. First, keeping the focus of small institutions on lending, which the small institution examination does, would be entirely consistent with the purpose of the Community Reinvestment Act, which is to ensure that the Agencies evaluate how banks help to meet the credit needs of the communities they serve. Second, raising the limit to $1 billion will have only a small effect on the amount of total industry assets covered under the more comprehensive large bank test. According to the Agencies' own findings, raising the limit from $250 to $500 million would reduce total industry assets covered by the large bank test by less than one percent. According to December 31, 2003, Call Report data, raising the limit to $1 billion will reduce the amount of assets subject to the much more burdensome large institution test by only 4% (to about 85%). Yet, the additional relief provided would, again, be substantial, reducing the compliance burden on more than 500 additional banks and savings associations (compared to a $500 million limit). Accordingly, we urge the Agencies to raise the limit to at least $1 billion, providing significant regulatory relief while, to quote the Agencies in the proposal, not diminishing "in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Instead, the changes are meant only to address the regulatory burden associated with evaluating institutions under CRA."

2. Public file (originations v. purchases). The agencies propose to distinguish between mortgage purchases and originations in banks' public evaluations. While this change would not result in additional burdens on banks, UBA nevertheless does not support the change. Underlying this proposal is the implication that purchases are not as desirable as originations under CRA. Not only is there no statutory basis for making this distinction, but we maintain that the public benefits of purchasing loans may be under-appreciated. There is little doubt that the availability of capital for secondary market purchases of mortgages has vastly enhanced their availability and affordability. Also, treating originations and purchases differently under the lending test establishes another degree of complexity for which little benefit is achieved.

3. Consideration of credit terms and practices. UBA and its members strictly support maintaining the highest standards when providing credit to customers, and ensuring compliance with all lending laws. Nevertheless, we are wary of the regulatory creep that is evident in the proposal to overlay compliance with other banking laws onto the CRA regulatory framework. The overriding purpose of the Community Reinvestment Act is to ensure that banks meet the credit needs of the communities they serve. The regulations promulgated under the Community Reinvestment Act should be strictly and narrowly crafted to advance the purposes of this underlying law and this law only. As already noted, we believe the regulations already overstep their legal tether by imposing onerous recordkeeping and reporting requirements, and by mandating investment and service activities that are, at best, only marginally related to the provision of credit.

Neither UBA nor its members doubt the importance of complying with the Equal Credit Opportunity Act, Fair Housing Act, Federal Trade Commission Act, HOEPA, RESPA, and TILA. But each of these laws was passed by Congress at different times to achieve different and distinct purposes. Each includes its own compliance mechanisms and specifies the consequences of violations. Compliance with each of those laws is already strictly monitored by the agencies and others, in accordance with the intent of Congress when passed.

We are not aware of any authority in the Community Reinvestment Act or in these other statutes (and the agencies have not proffered any available authority) that permits the agencies by regulation to consider compliance with separately-passed acts when assessing a bank's compliance with the Community Reinvestment Act. To do so is to arrogate to administrative agencies the power to enhance (i.e., alter) the enforcement scheme of underlying laws, an activity that is clearly legislative in nature and outside of the legal purview of administrative agencies.

We are particularly troubled by any attempt to tie CRA assessments with the still-amorphous concept of predatory lending. The agencies note in the proposal that they will "consider all credible evidence of discriminatory, other illegal, or abusive credit practices that comes to their attention." We hope that the agencies would not look to compliance with local predatory lending laws that have proliferated in recent years throughout the country. It is difficult enough that banks have to navigate their way through nonsensical and misdirected predatory lending laws and ordinances. To cross-enforce such laws with CRA assessments only compounds the unfairness.

More specifically, the agencies propose to develop specific rules addressing "equity stripping," one of the "central characteristics" of predatory lending. This is the practice of making home-secured loans without regard to borrowers' ability to repay. Of course, UBA member banks condemn these unscrupulous practices perpetrated largely by loosely-regulated non-depository creditors in the marketplace. But the agencies' new emphasis suggests the need also to establish a bright line between a loan that is considered predatory and one that is innovative, particularly when, in the course of meeting its CRA obligations, a bank makes loans on terms that normally would not be acceptable under conventional underwriting standards.

Lastly, while the agencies suggest that the proposed change will not entail specific evaluations of individual complaints or loans, banks can hardly take comfort in the direction in which this proposal leads. The proposal is fraught with the promise of further reporting and other complexities. The proposal to consider the activities of banks' affiliates would add yet another layer of complexity and another basis for extra paperwork. We fear that these proposals are exercises in administrative experimentation that serve only to bring about the continued transformation of the CRA regulations and, in view of the clear statutory purpose of the Community Reinvestment Act, to make them unrecognizable. For the foregoing reasons, UBA opposes the proposed enhancements to section __.28(c) of the regulations.

4. **Data Collection and Reporting -** Currently large institutions are required to collect and report data on small business, small farm and community development loans, and to supplement Home Mortgage Disclosure Act (HMDA) data with property locations for loans made outside MSAs. UBA and it's members strictly oppose enhanced data disclosure at the census tract level to the public. UBA believes that current reporting requirements are sufficiently effective and efficient in assessing CRA performance.

UBA and it's member institutions strongly oppose the agencies' intention to revise the regulations to enhance the data disclosed to the public for two primary reasons. First, there are already in existence extensive data reporting requirements required. While this proposal would not increase the reporting burden, we believe that additional disclosure of business and farm loans by geography (census tract) in the CRA Disclosure Statement will significantly increase the possibility of revealing private information about small business and small-farm borrowers. In rural areas where minimal loan activity occurs a strong possibility exists to pinpoint confidential information regarding a specific borrower, while providing no significant advantage in assessing an institutions CRA performance.

Secondly, UBA believes that this level of disclosure may create a process that allows outside groups, without the knowledge of a banks comprehensive lending strategy and CRA performance, to make exaggerated and highly publicized attacks on individual banks and the banking industry generally as a means to extort funds and services for new programs. CRA inherently provides no reward for a community group to compliment and support a bank's record of community lending. Rather, if this level of disclosure is made available, it may provide incentive for exaggerated and intense criticism of the industry, unfairly disparage the image of the industry in the eyes of the public, and damage relationships between banks and responsible community representatives, with little benefit in the assessment of the institutions CRA performance.

UBA does not believe that this revision properly balances the benefits of public disclosure against any risk of unwarranted disclosure of otherwise private information and may subject banks to additional and unnecessary scrutinization by community organizations.

5. **Qualitative/quantitative standards.** The agencies may seek to clarify through interagency guidance how qualitative considerations should be applied when assessing a bank's lending, investments, and services. We recognize the difficulty of crafting clear regulations and applying them in a manner that achieves the potentially conflicting goals of flexibility and consistency. This issue is particularly pertinent to the investment test. The agencies have received comments from banks about the challenge of finding suitable investment opportunities, where competition for the best opportunities can be fierce. Over the years, UBA has expressed concerns that the investment test places too much weight on quantitative factors.

At the same time, UBA members continue to voice frustrations over differential treatment by examiners from one year to the next, by examiners of different banks supervised by the same agency, and by examiners among different agencies. Moreover, the two qualitative factors specifically addressed in the regulations —innovation and complexity—in some ways have become enshrined as ends in themselves, such that their absence can be the basis for preclusion from a higher rating. A bank should properly receive recognition for finding innovative ways to engage in CRA activities where conventional opportunities are lacking or where a transaction could not be made through conventional means. But if a bank can best respond to the needs of its community by providing conventional forms of loans, investments, and services, then the absence of innovation is irrelevant.

6. **Investment test.** The agencies may develop additional interagency guidance on the investment test. UBA emphasizes again that, because there is no statutory basis for the investment test, this test should not be a mandatory element of the CRA examination. Nevertheless, as its elimination appears unlikely, in the alternative, we generally support the agencies' proposed clarifications.

We support any guidance to clarify that the investment test is not to be a source of pressure on banks to make imprudent equity investments. This clarification contemplates the possibility that, in some areas, suitable investment opportunities are lacking, or that opportunities can be found only with an unreasonable amount of time and effort. Therefore, any guidelines should acknowledge this possibility, and further clarify that banks confronted with such limitations would not be penalized. For the same reason, we also support guidance on counting community development activities outside of assessment areas, as long as any effort taken to search beyond a bank's assessment areas is at the bank's option. Any blanket requirement to look for opportunities beyond a bank's assessment areas would only ensure increasing finding and due diligence costs.

As noted above, we agree that the presence of "innovation" and "complexity" is applicable only in recognition of a bank's efforts to engage in CRA activities where a transaction could not be made through conventional means. We also agree that guidance would be useful regarding the treatment of prior investments and commitments for future investments. Appropriate weight should be given to investments already on the books. We believe that the duration of an investment depends on factors that should be unrelated to a bank's CRA examination cycle, and that banks should not be expected to churn investments to satisfy CRA requirements.

Finally, as to demonstrating the "primary purpose" of an investment of serving low- and moderate-income people, our members have suggested that establishing proof is often painstaking, and good investments are passed over even though the benefits to communities at large, or to particular segments of a community, are evident, albeit difficult to substantiate. Few organizations engage in activities and serve segments of the community in ways that are entirely consistent with, and recognized by, the CRA regulations. Also, it is not always feasible, with respect to a broader investment vehicle, for a bank to direct funds only to narrow, acceptable activities within the investment. Therefore, UBA welcomes any guidelines to relieve the pressure on banks to track investments in order to document the provision of services to targeted individuals and communities.

In closing, we appreciate the opportunity to submit these comments. Our members consider CRA a critically important program for the banks and the communities they serve. We look forward to working with the regulators to ensure that all of the communities in Utah are fully served by the banks in this state.

Sincerely,

Howard M. Headlee
President