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March 27, 2004

Docket No. 04-06  
Communications Division  
Public Information Room, Mailstop 1-5  
Office of the Comptroller of the Currency  
250 E St. SW,  
Washington 20219

Docket No. R-1181  
Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington DC 20551

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th St NW  
Washington DC 20429

Regulation Comments, Attention: No. 2004-04  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street NW  
Washington DC 20552

Dear Officials of Federal Bank and Thrift Agencies:

Thank you for the opportunity to comment on the proposed changes to the Community Reinvestment Act.

Coastal Enterprises, Inc. (CEI) is a nonprofit community development corporation (CDC) and community development financial institution (CDFI) serving Maine. In addition, our venture capital and new markets tax credit (NMTC) programs serve parts of Northern New England and upstate New York. For over 26 years we have sought out ways to improve access to capital for marginalized populations to provide affordable housing and access to decent employment for the people and places left out of the economic mainstream, and to align private capital markets with social investments benefiting communities, residents and the environment. We have loaned over \$121 million to 1,400 businesses and helped leverage another \$350 million of additional investment. This investment has helped create 13,000 full-time hires and retained over 15,000 full time positions.



*A private, nonprofit community development corporation founded in 1977  
to provide financial and technical assistance to the people, businesses and communities of Maine.  
CEI is an equal opportunity provider.*

CEI's success has depended in part on its ability to partner with banks in targeting capital to low-income communities. The Community Reinvestment Act has been important in helping leverage private capital for the community development field and low-income communities. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. As a member of the National Community Reinvestment Coalition, CEI would like to comment on several proposed changes to the CRA regulations as outlined below.

The proposed changes have three major elements:

- 1) Expansion of data collection and reporting for small business and home lending;
- 2) Elimination of the investment and service tests for banks with assets between \$250 million and \$500 million;
- 3) Establishment of a weak predatory lending compliance standard under CRA.

We believe the first of these proposals will have beneficial impacts, however the second and third proposed changes may damage the ability of many community groups to raise investment capital from smaller community banks and may entrench predatory lending practices.

#### **1. Expansion of data collection and reporting for small business and home lending**

**We support the public reporting of specific census tracts of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution**

The federal agencies propose to publicly report the specific census tracts of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods with small business loans. Also, the regulators propose reporting purchases separately from loan originations on CRA exams and separately reporting high cost lending. (NCRC, 2004) *We are pleased that this additional data will be available to help us determine how well Maine's banks are serving the community.*

#### **2. Elimination of the investment and service tests for banks with assets between \$250 million and \$500 million**

**Proposed changes to the CRA exams will eliminate the investment and service tests for banks with assets between \$250 and \$500 million. This could potentially devastate investments in community groups by medium sized banks in rural areas such as Maine.**

Under the current CRA regulations, large banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities (NCRC, 2004). Proposed changes to the CRA exams will eliminate the investment and service tests for banks with assets between \$250 and \$500 million.

There are currently a total of 40 banks chartered and based in Maine. Of these, 16 currently have fewer than \$250 million in assets and fall under the current streamlined CRA exam where they are subject to evaluation of their lending, but not investments or services. There are 24 banks that have assets in excess of \$250 million and of these 13 have assets between \$250 and \$500 million. **Under the**

proposed changes to the CRA exam, these 13 banks would be exempt from tests in areas of investing and services to low- and moderate- income communities.

Bank Assets	No. of Banks ME	No. ME Banks partner with CEI Venture Funds	% ME Banks by assets, partnering with CEI Venture Funds
< \$250 million	16	2	12.5%
\$250 - \$500 million	13	7	54%
> \$500 million	11	7	64%

We believe the regulatory function of CRA has opened up many opportunities and has had positive rather than negative effects for both small and large banks. We are very concerned that the motivation for some of these banks to invest in community groups will be reduced.

Of the 16 banks invested in CEI's venture funds, 14 are subject to the CRA investment test. Of the two not subject to the CRA investment test, one is part of a larger corporation that is subject to CRA investment tests elsewhere. A breakdown of the banks currently subject to investment tests under CRA shows that of 13 banks with assets between \$250 and \$500 million, 7 (54%), work and invest with CEI venture funds. Similarly of 11 banks with assets over \$500 million, 7 (64%) work and invest with CEI.

Furthermore, with the proposed reduction in the Bank Enterprise Awards, which offer an important financial incentive to smaller banks to invest in Community Development Financial Institutions, the CRA becomes even more important in ensuring small to medium sized banks are providing important capital and services for low- and moderate- income communities.

### 3. Establishment of a weak predatory lending compliance standard under CRA.

The proposed changes to the predatory lending standard in the Community Reinvestment Act could result in an entrenchment of predatory practices

Although we are pleased to see efforts made to address the issue of predatory lending in the proposed changes to the CRA, the proposed change could actually result in an entrenchment of predatory practices. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The method of determining whether a borrower can repay is based on whether there is a foreclosure. Unfortunately, this standard will not cover many instances of predatory lending.

In many cases of predatory lending there is no foreclosure. The loan may have structures built into it that make the loan excessively high-cost for example large closing fees, prepayment penalties or balloon payments and continued refinancing that incorporate many of these structures.

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The Center for Responsible Lending in North Carolina estimates that \$23.4 million are lost in Maine due to the following practices: financed credit insurance; exorbitant up-front fees; sub prime prepayment penalties; excess interest charged<sup>1</sup>. None of these practices would be caught under the proposed standard.

Once again, thank you for the opportunity to comment on the proposed changes to the Community Reinvestment Act. If you have any questions, please do not hesitate to contact either Hannah Thomas ([hlt@ceimaine.org](mailto:hlt@ceimaine.org)) or me ([rlp@ceimaine.org](mailto:rlp@ceimaine.org)) at the address above.

Yours sincerely,



Ronald L. Phillips  
President

Cc:  
Coastal Enterprises, Inc. Board of Directors  
Maine Attorney General Steven Rowe  
National Community Reinvestment Coalition  
President George W. Bush  
Treasury Secretary John W. Snow  
Senator Olympia Snowe  
Senator Susan Collins  
Congressman Thomas Allen  
Congressman Michael Michaud

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<sup>1</sup> "Quantifying the Economic Cost of Predatory Lending", Eric Stein, 2001 – *Center for Responsible Lending*

## Comments from the National Community Reinvestment Coalition

The proposed CRA changes will thwart the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. Instead, the proposed CRA changes would facilitate predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws.

The proposed changes include three major elements: 1) provide streamlined and cursory exams for banks with assets between \$250 million and \$500 million; 2) establish a weak predatory lending compliance standard under CRA; and 3) expand data collection and reporting for small business and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage imposed by the first two proposals. In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas in their proposal, and thus missed a vital opportunity to continue CRA's effectiveness.

Streamlined and Cursory Exams. Under the current CRA regulations, large banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between \$250 and \$500 million. The proposed changes would reduce the rigor of CRA exams for 1,111 banks that account for more than \$387 billion in assets.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of affordable rental housing needed by large numbers of immigrants and lower income segments of the minority population. Likewise, the banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services. Thus, the effectiveness of the Administration's housing and community development programs would be diminished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit needs if they eliminate the investment and service test for a large subset of depository institutions.

Predatory Lending Standard. The proposed CRA changes contain an anti-predatory screen that will actually perpetuate abusive lending. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The asset-based standard falls short because it will not cover many instances of predatory lending. For example, abusive lending would not result in lower CRA ratings when it strips equity without leading to delinquency or foreclosure. In other words, borrowers can have the necessary income to afford monthly payments, but they are still losing wealth as a result of a lender's excessive fees or unnecessary products.

CRA exams will allow abusive lending if they contain the proposed anti-predatory standard that does not address the problems of the packing of fees into mortgage loans, high prepayment penalties, loan flipping, mandatory arbitration, and other numerous abuses. Rigorous fair lending audits and severe penalties on CRA exams for abusive lending are necessary in order to ensure that the new minority homeowners served by the Administration are protected, but the proposed predatory lending standard