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Michael P. Smith
President

November 9, 2001

Docket No. 01-16
Communications Division
Public Information Room
Mailstop 1-5
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th St. and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1112

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 Seventeenth St., N.W.
Washington, D.C. 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G St., N.W.
Washington, D.C. 20552

Attention Docket No. 2001-49

To the Agencies:

In response to the joint advance notice of proposed rulemaking published in the July 19, 2001 Federal Register, the New York Bankers Association is submitting these comments on the regulations implementing the Community Reinvestment Act ("CRA"), 12 U.S.C. 2901 *et seq.* Our Association is generally supportive of the current implementing regulations and urges that the agencies exercise care before undertaking any changes that could profoundly affect current compliance efforts. The agencies must weigh the benefits of any changes proposed against the costs of compliance that would result. Our Association is comprised of the community, regional and money center commercial banks of New York State, with aggregate assets in excess of $1 trillion and more than 220,000 New York employees.

The current CRA regulation was developed over the course of several years with input from the banking industry and community groups in an effort to provide a regulation more focused on results than on paperwork. The New York Bankers Association was an integral part of the process of developing the regulation, recommending adoption of the strategic plan concept at the Federal level after it had been included in a response the Association provided to an earlier New York Banking Department proposal to revise its CRA regulation. Although the current regulation certainly deserves examination, the agencies should ensure that any changes proposed as a result of the examination do not result in additional regulatory burdens for the industry or in any adverse impacts on existing institutions that have made substantial investments in reliance on it.

1. Large Bank Exam: Investment, Lending and Service Tests

The proposal requests comment on whether the existing regulation represents an adequate balance between qualitative and quantitative measures and among the lending, investment and service tests. Our Association believes that the balance needs to be somewhat readjusted from the current regulation. There is widespread concern that the current regulation has been interpreted by examiners as returning CRA to the "numbers game" that it had become prior to the reform of the 1990's. Our Association would support providing substantially enhanced flexibility in the interpretation of bank activities that can be considered as qualifying for the tests. While the lending test has in general worked quite well, it is important to maintain equal credit for purchased loans as for loans originated by particular institutions. Both purchased and originated loans increase the amount of credit available in banks' service areas. By favoring originated loans over purchased loans, the agencies would inadvertently provide a competitive advantage to retail over wholesale organizations.

In addition, community development lending is so important to the health of many low- to moderate-income communities that we believe it should be accorded great weight in any regulations finally proposed. By permitting lending institutions to balance loan originations with loan purchases and to weight community development lending more highly, the agencies will substantially increase the flexibility of banks to comply with CRA. Moreover, by according examiners increased authority to balance quantitative with qualitative examination factors, any proposal will both reduce the likelihood of the regulation becoming purely a "numbers game" and further increase the flexibility of banks in complying.

Both the service and investment tests can be improved from the current regulation. The investment test, by measuring principally year-to-year increases in investment does not adequately recognize the need for "patient capital." Many community development investments are expected to yield adequate returns over long periods of time and only as the overall economic health of communities in which the investments are made improves. It is extremely important, therefore, that the investment test recognize both investments made and held on an annual basis.

In addition, the limited definition of investments that meet the investment test makes it difficult for even the most aggressive bank to find sufficient investments that meet bank capital standards and internal hurdle rates to qualify. We would therefore urge that the agencies consider substantially expanding the definition of CRA eligible investments to consider investments that benefit an entire community, not solely its low- to moderate-income areas.

The service test, unfortunately, appears in many respects to be interpreted differently by different examiners. We would urge that the test be further clarified and that community development service activities be accorded substantial weight under the test.

2. Small Institutions

The current levels of streamlined small institution examination have not kept pace with the growth and integration of the banking industry. Whereas only a few years ago, banks with assets below $250 million accounted for more than 90% of all institutions, today they account

for a far smaller percentage. We would therefore recommend, first, that the agencies delete the limitation of the small bank definition to banks that are in holding companies with less than $1 billion in assets, and, second, that the asset definition for small banks be increased to $1 billion. The limitations in the small institution examination to those not part of a holding company of more than $1 billion is not consistent with banking reality. A community bank does not cease to be a community bank by becoming part of a larger holding company. Moreover, we are unaware of any institutions that choose their form of corporate organization (whether a branch or a separate charter) in order to minimize their CRA compliance burden. In addition, the $250 million definition for small institution certainly is inapplicable to a State like New York, where a community bank serving rural upstate areas may be many times larger than $250 million.

3. Strategic Plan

Few banks have taken advantage of the flexibility provided by the strategic plan. We urge the agencies to examine ways to revitalize the strategic plan, providing banks greater certainty in its use.

4. Data Collection and the Maintenance of Public Files

Our Association would strongly oppose any expansion inn data collection requirements. Institutions have invested in substantial start-up and on-going data collection costs to develop and maintain the current system. Any changes would require large investments of both time and money that can be better used in providing CRA-related services.

At the same time, the current system of public disclosure is unduly burdensome. For large institutions requiring that all HMDA data be included in the CRA public file has led to a massive paperwork burden and significantly reduced the usefulness of CRA public files. Very few requests are ever received for public CRA files. We recommend that HMDA data be maintained as is Regulation C data in a central location from which a customer can request data.

The New York Bankers Association strongly supports the Community Reinvestment Act. We have, in numerous contexts, urged that it be retained. We also believe that the current implementing regulations generally work well, but could be enhanced, as we have described, in several respects. It is critical, however, that any amendments to the CRA implementing regulations balance the benefits to be obtained with the costs of compliance. In addition, no bank currently in compliance with CRA should be penalized by any changes made in the regulations. We appreciate the opportunity the agencies have provided to comment on this advance notice of proposed rulemaking.

Sincerely,

Michael P. Smith