212

October 17, 2001

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention Docket No. 2001-49

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551
Docket No. R-1112

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

Re: Community Reinvestment Act Regulations—Advance Notice of Proposed Rulemaking

Dear Sir or Madam:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the questions raised in the joint Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA) Regulations.

The Federal financial institution supervisory agencies (the Agencies) are collectively undertaking to review the CRA regulations, in fulfillment of a commitment to do so when the current regulations were significantly revised in 1995. That revision—which has come to be called the CRA Reform-- sought to improve upon the existing regulations in three principal ways: (1) changing the exam process to emphasize an institution's actual performance, rather than its process in fulfilling CRA; (2) promoting greater consistency

[1] The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer finance (auto, home equity and education), electronic retail delivery systems, bank sales of investment products, small business services, and community development. CBA was founded in 1919 and provides leadership and representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include 85% of the nation's largest 50 bank holding companies and hold two-thirds of the industry's total assets.

in examination; and (3) eliminating unnecessary burdens. This ANPR is the beginning of an effort to assess the effectiveness of the CRA Reform.

In the interim, other issues have arisen that have an impact on CRA evaluations, some of which may call for a reassessment of the exam process. Therefore, many new issues are raised in the ANPR that are not strictly related to assessing the success of the CRA Reform, and the Agencies have encouraged comments on all aspects of the regulation and invite a full discussion of the issues.

CBA COMMENTS

General Comments

We appreciate the opportunity to comment on the ANPR. We have given considerable thought to these issues. We have held several long meetings of our Community Reinvestment Committee, comprising many of the largest banks in the country. In some cases, our members' positions have coalesced and are uniform. In other cases, we are still debating these issues. We expect many thoughtful proposals to emerge, and we look forward to the debate over their merits.

We are in complete agreement on a number of points, which we offer as "general comments" prior to addressing the specifics. The most important of these is the desire to *avoid a major reworking of the regulation.* We are also in agreement that the CRA rules need to be (or need to be interpreted and applied to be) more flexible, and more consistent with the business strategies employed by banks. We offer these and other general comments in the hope that you will use them as a template to assist you in formulating concrete answers to the specific issues. Following these comments, we address some of the specific issues raised in the ANPR.

a. No Major Rewrite of the Regulations

The ANPR states at the outset: "A fundamental issue for consideration is whether any change to the regulations would be beneficial or is warranted." (66 FR 37603) We wholeheartedly agree that this is a primary issue and should be dealt with before consideration of any revision to the current regulation.

There is general agreement among our members that **we do not want to embark on another major CRA reform process**. We do not believe this would be in the best interest of the communities or the financial institutions, as it would entail a major and

protracted distraction from the business of serving community needs. Therefore, many of our comments amount to suggestions for fine tuning of the existing process, and could be accomplished without amending the regulations. They could be accomplished through examiner training, revisions to the examiner guidelines, improved agency coordination, and the like.

As we note in greater detail below, some banks believe that there is a need to reconsider the three tests that were created during the CRA Reform process. This would not call for any difference in the substance of the regulations or in those activities for which the regulations give credit. Rather, it would alter the manner in which the agencies take those activities in consideration in the performance evaluation, to increase the flexibility—and therefore the sustainability—of the CRA regulations. Other banks differ on the need to modify the tests. But they are largely in agreement that a whole new CRA reform process is neither necessary nor desirable.

b. Greater Flexibility Needed

The regulations have always tried to balance the need for numerical certainty with the need for flexibility and subjective assessments. We believe that the balance has shifted too far in the direction of benchmarking and quantitative measurement; and the consequences are harmful to lenders and consumers, and ultimately to CRA itself.

We agree that CRA requires some quantitative measures. Financial institutions also benefit by having some certainty that permits them to plan for the future and know what steps they need to take to achieve their goals. Complete subjectivity would not be in anyone's interest.

However, more flexibility is needed. The CRA Reform shifted from assessing institutions' efforts to assessing their results, putting a heavy burden on the numbers. No one gets an 'A' for effort. Yet the LMI marketplace within the community does not always present opportunities for a large enough number of safe and sound loans or "qualified" investments for all the CRA-covered institutions. Furthermore, the competition among financial institutions to achieve results in some markets can make it extremely difficult to perform, if the only measure of success is how many loans or investments are racked up. They are forced to make decisions that are not in their own best interests—or even in the best interest of their communities—because their choices are too limited. They may buy loans to bolster their performance in a market. They may make loans at below market rates, knowing that they will not be profitable. They may choose unprofitable investments because they are the only investments to be found. They may make grants or investments that ought not to be made because of geographical constraints in the regulations.

We believe these are still the exceptions, not the rule. But they represent the types of problems that arise when the regulations are viewed too rigidly by the examining agencies. And they appear to be increasing. The number of affordable mortgage loans

that can be made is ultimately limited, and some markets are more saturated than others. At the same time, examiners often expect performance (i.e. quantity of loans and new investments) to increase over time. Many of our institutions have been told that their performance needs to continue to improve to achieve the same rating; yet in some markets, merely to maintain the same level of performance involves increased effort.

c. Need for a Sustainable Business Model

If CRA is to continue to be viable into the 21st Century, it must be allowed to reflect the real business strategies that institutions develop to meet local needs, to be profitable and to grow.

Financial institutions do not fit a few standard molds. Yet CRA continues to expect a uniformity of performance in meeting communities needs—as if all institutions are expected to be equally good at all things financial. Institutions place different emphasis on different products and services, and are continually reassessing that emphasis to maximize profit and meet community needs. Yet the regulations effectively make a policy choice about what a good bank ought to do, regardless of the bank's skills or business choices.

The Agencies have tried to mitigate the uniform application of the rules (e.g. through the use of performance context; large bank vs. small bank treatment; wholesale/ limited purpose test; Strategic Plan), and we support those efforts, but they have not been enough.

We recommend seeking ways to ensure that CRA evaluations assess financial institutions in a manner that is more consistent with real business strategies, where lending and investment can continue to be viewed as a profitable and sustainable market for financial institutions, rather than merely a compliance-driven experience.

Examples of such approaches include:

--More and better use of the Performance Context. The vehicle is already in place to permit much greater flexibility in the examination process. The performance context was created to provide just such flexibility and to permit each institution to demonstrate how the market and the institution's business model need to be differentiated from other institutions that might appear to be similarly situated.

--Greater opportunity to shift a bank's practices among lending, investment and service, so that it can best meet local needs within the context of a profitable business model.

--Expanded opportunity for qualified investments.

--Greater flexibility to go outside the assessment area (but not a requirement to do so), so that when a market has an excess of dollars chasing an insufficient need, banks can be free to seek out other markets with needs they can meet. As discussed below, we must retain the link to the geography of an institution's deposits in locating Assessment Areas; however, once a bank has met its Assessment Area's needs, it should be able to have the flexibility to lend where it wants outside the Assessment Area.

d. Reduce Costs to Financial Institutions

We believe that the Agencies badly underestimate the amount of time and money spent on compliance with data collection and reporting requirements of CRA (and related laws). In our comment letter to the Agencies in response to their joint request for an extension of the approval for the data collection requirements under the Paperwork Reduction Act, we detailed our concern. (Our comment letter is attached for the record.)

The request for approval was itself a vivid demonstration of the inability of the Agencies to do a cost-benefit analysis regarding the data collection requirements. In the Federal Register notice, the Agencies pointed out their lack of empirical data on which they reached the figures they used to estimate the cost burden of compliance. Beyond that, it was unclear how they chose to measure burden, and the total figure may well have reflected a small part of the total cost to institutions. In any event, the figure appeared well below what our member institutions believe they must spend to comply. A better understanding of the costs would provide the agencies with a more realistic sense of the impact of any additional reporting.

The exam process itself is becoming more streamlined as the "reformed" CRA is better understood and we all –examiners and examined alike—learn how to perform more efficiently. More data are being gathered in advance and the examiners spend less time on site. Thus, the costs of the exam itself, still a burden for some institutions, are coming down with time. Significant changes to the regulation now would result in a dramatic increase in cost to financial institutions as they learn the new regulation and as the examiners wrestle with the new issues that will inevitably arise. But there are some places where minor changes can result in significant savings.

First and foremost, data collection and reporting has been, and remains, a significant cost for financial institutions. We urge you to reconsider the existing requirements and seek ways of reducing that cost. In addition, the Federal Reserve Board is now contemplating the addition of new requirements for reporting data under Regulation C (HMDA).[2] These substantially overlap with the requirements of the CRA regulations, and would undoubtedly be used to assist in the CRA examination process, yet they are not viewed as CRA data requirements *per se*. It is imperative that the Agencies consider the larger picture when considering the cost of existing data collection and reporting, and when

[2] 65 Fed. Reg. 78655 (Dec. 15, 2000)

contemplating additional reporting. The Agencies should undertake a thorough analysis of cost, and they should bear the burden to demonstrate that the benefit to the institutions or the regulatory compliance and exam process is sufficient to overcome the cost burden on the institutions. The effort that was undertaken as part of the OMB's review was simply inadequate to the task.

Other costs to financial institutions arise as a result of some unnecessary requirements placed on institutions as part of the exam process. These often appear to be due to an unnecessarily technical reading of the regulation. One of the more extreme examples that arise is the effort that is necessary to demonstrate what qualifies as a community development activity. For example, an investment in a school requires the institution to prove that at least 51% of the students are in the school lunch program. The effort necessary to demonstrate compliance with this sort of technicality imposes unnecessary costs on banks that ultimately hurt the communities themselves. The cost that goes into the effort could be better spent in genuine efforts to make loans or investments, or simply in keeping down the incremental costs to consumers who have deposit or loan relationships with the banks. There is simply no reason to expend such effort to prove that an institution has met every hyper-technical requirement of the CRA rules. A more broad-brush, flexible, "macro" approach would reduce costs and, not coincidentally, serve everyone's needs better.

e. Introduce Incentives

Banks have no obligation under law to fulfill any particular CRA requirement. The Act merely lays out an expectation, and leaves it to the examiners and the regulatory agencies to assess the performance of banks in fulfilling that expectation. It is important to remember this when considering the astonishing record of performance that banks have amassed over the past decade or so. The system depends on the commitment of banks to maintain a strong, positive community image and to serve the needs of their community. Because they have such a commitment, most banks have put vast resources into CRA, and will continue to perform well in the years to come.

However, the Agencies should be concerned that an increasing number of banks may find it is no longer cost-effective to make the extra effort to strive for an "outstanding" rating. Certainly, many institutions will continue to make an extra effort to be among the top performers, and as an association, CBA will encourage our members to do so. Nevertheless, if the cost of attaining an "outstanding" continues to rise because the agencies keep "raising the bar," we believe that a cost-benefit analysis will lead many banks to reach for only so much performance as is necessary to prevent a "needs to improve" rating. Therefore, we encourage you to consider ways—either monetary or otherwise—to "reward" institutions that attain an "outstanding."

One approach that could successfully provide a "carrot" for institutions to seek an outstanding-- both benefiting the better institutions and strengthening CRA --would be to place greater reliance upon an "outstanding" during an application for a merger or

acquisition, and place a higher burden on those who are challenging the application. One of the principal purposes of the CRA examination, as defined by the regulations, is to provide the information necessary to determine, if and when the institution files an application for a deposit facility, whether the institution has an adequate record of helping to meet the credit needs of their community. [3] Yet for some institutions, at the time of an application, the agencies will ask for additional data, or even undertake a fairly thorough re-examination—sometimes more than seems necessary merely to bring the results of the last exam up to date. This can add considerably to the cost of a merger or acquisition. We recommend that any institution which received an outstanding rating at the last examination be given a presumption that the rating remains outstanding at the time of a subsequent application. No new exam would be undertaken unless significant and compelling evidence is put forward to suggest that the institution's rating may have fallen to a "needs to improve" in the interim.

Our purpose in making this suggestion is to strengthen the integrity of CRA, not to reduce it. Few enough institutions receive an outstanding rating. If the cost of achieving this lofty goal becomes too high, there will never be more than a handful of institutions willing to make the effort—particularly if the examiners require continually incrementally higher levels of performance. An extra incentive to be among the best would serve the interests of the communities by increasing the number of institutions that go the extra mile and would reward those institutions that do so.

f. Continue to Improve Exam Process

Nothing in the ANPR appears to address the CRA Reform from the perspective of examination process. We recognize that this is not a "regulatory" issue per se, but it is essential to CRA.

CRA examiners have a particularly challenging job that requires a thorough understanding of many diverse facets of banking and compliance. After the CRA Reform, it has taken some time to settle in with the new exam process. Many of the uncertainties of the first few years have abated, and the exam process has become more streamlined and more certain for everyone as the kinks have been ironed out. We applaud what has been accomplished in a short time, and we encourage an even greater attention to the exam process itself.

[3] "(b) Purposes. In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

"(1) Establishing the framework and criteria by which the Board assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

"(2) Providing that the Board takes that record into account in considering certain applications." (Emphasis added.) Regulation BB; 12 CFR 228.11(b).

We commend the Agencies' use of well-qualified and well-trained examiners, and we encourage even greater support. In particular, we encourage consideration of the following:

Greater consistency among agencies. Although we encourage flexibility in the application of the regulation, consistency is needed in the definitions and the underlying coverage, among examiners at different agencies. Different agencies sometimes appear to provide different information to examiners, who therefore do not always respond to the same basic questions in the same way. Many of our members are examined by more than one primary regulatory agency within the same corporate family. It is important that, at least in the context of their exams, the agencies provide a coordinated and consistent treatment under CRA. To accomplish this, we recommend more uniform training and support.

Greater industry input in the exam guidelines. The Agencies have done a good job of interacting with the industry in developing the CRA regulations and the exam guidelines. We encourage still greater involvement. No one understands the process more than those who are being examined. We would encourage more industry involvement in providing feedback, in training examiners, and in reducing the exam burdens on both the institutions and the Agencies.

Specific Comments

In response to some of the specific issues raised in the ANPR, we have the following comments:

Large Retail Institutions: Lending, Investment, and Service Tests

Among all the issues presented in the ANPR, we have probably wrestled most with the question of the way in which the different tests—lending, investment and service—are given consideration in the Performance Evaluation. We do not recommend that any of the activities covered by the three tests should be excluded from the measure of an institution's CRA performance. They are all valuable and all should be part of any assessment of an institution's efforts to help meet its community's needs. However, some institutions are concerned about the way in which the tests artificially divide the different activities, particularly the treatment of qualified investments and community development activities.

"Qualified investments" (other than grants) are often hard to come by within a community. As a result, there is often great competition within some markets for a limited number of such investments in order to reach the necessary level of new investments for the CRA exam. This is caused in part by the narrow (we believe) way investments are defined and by the push to locate new investments rather than receive investment test credit for ongoing commitments. Good investment opportunities (good

both for the communities and the institutions) involve such a commitment of time and resources that they cannot be accomplished frequently or in every community. The artificial market inadvertently created by CRA may result in depressed pricing, and can cause institutions to make investments with no expectation of a return in order to fulfill the perceived requirements of the test.

We make several suggestions in the discussion of the investment test, below, that we believe might assist in reducing the problem.

Some in the industry believe that, for their institutions, the problem is aggravated by the manner in which qualified investments are assessed as a separate and distinct test. Because the examination is structured with these rigid divisions that are often incompatible with business lines, they believe their institutions have less flexibility to vary their activities to best suit both their strategies and their market's current needs.

Different approaches have been proposed to deal with this problem by blending or reorganizing the tests. One approach that has been suggested to accomplish this would be the creation of a composite community development test for large retail banks (similar to the community development test for wholesale or limited purpose banks) that would evaluate all community development loans and community development services as well as qualified investments in one comprehensive test. Others have recommended combining the lending and investment tests into one. The purpose of these and similar suggestions is to provide an institution with the needed flexibility to focus on the activities that are profitable, that suit its business strategy, and that meet its communities' changing needs. The performance context would be an essential tool for the examiners to understand these elements and use them in evaluating the institution.

In keeping with the theme of enhanced flexibility, it would be worth considering how institutions might be permitted to choose how to be assessed, within some limits to be determined by the Agencies. Giving institutions more choice would provide greater flexibility to the regulations and keep the burden of change to a minimum.

Ultimately, the solution may depend on what can be accomplished through examiner guidance and training, more flexible consideration of investments, and enhanced use of the performance context. We will continue to look at such suggestions for modifying the tests, and to examine their relative merits.

Lending Test Issues

As we have said, the biggest concerns of our members are to expand the flexibility of the regulation and make it more consistent with the business strategies of financial institutions, while not embarking on a major overhaul of the regulation. Our comments in regard to the lending test reflect these concerns.

In general, the lending test is effective in assessing an institution's record of helping to meet the credit needs of its community. However, as we have said, the balance between quantitative and qualitative assessment has shifted too far in the direction of the former. Consequently, evaluations are often based strictly on the numbers, with inadequate consideration of the institution's performance context. While the goal of the quantitative measures in the current regulation is to provide more consistency and predictability, the regulation also explicitly recognizes that all data must be evaluated within the institution's performance context. This issue can best be dealt with through greater guidance and expanded training for examiners on the proper application of qualitative factors rather than a revision to the regulation.

Originations vs. Purchases. The regulations currently allow equal treatment for loan originations and purchases. It has been asserted by some that this discourages banks from increasing capital directly in their communities, and permits them to buy and sell the same loans repeatedly to influence their CRA rating.

We believe that loan originations ought to be treated the same as purchases. By permitting banks to get CRA credit for purchases, the regulations permit the freeing up of capital that can be utilized to make additional loans that benefit the community. CRA speaks of an institution's record in *helping to meet its communities' credit needs*, and there is little doubt that the purchasing of loans made in the community does just that. The benefit of an active secondary market has been amply demonstrated. By buying the loans, the bank allows more loans to be made, and that is certainly helping to meet credit needs.

Appropriateness of Lending Activities. We do not believe that the CRA examination is well suited to make determinations about the "appropriateness" of the lending to the communities.

Banks and thrifts can demonstrate a level of scrutiny unmatched by unsupervised lenders, with multiple and often overlapping examinations by state and federal compliance as well as safety and soundness examiners. Each form of exam and each examination team undertake a different analysis, many of them far better suited to examine for illegal loan terms or fraudulent practices.

In particular, the fair lending examination looks at issues related to violations of the anti-discrimination laws and compliance examinations look at issues related to other abusive or illegal practices. CRA effectively takes these findings into consideration already, as spelled out in the most recent Q&A.

Letters of Credit. We are grateful that the current reporting guidelines allow for information regarding letters of credit to be provided as supplementary information, as we believe that letters of credit are legally binding commitments to lend. However, the Agencies are inconsistent in their treatment of letters of credit, and should routinely consider them. Letters of credit involve identical processing as loans, and constitute a

full legal obligation. Banks should be encouraged to provide this much needed form of credit. *However, we oppose additional reporting requirements.*

Investment Test Issues

The current requirements of the regulations often appear to encourage institutions to find investments even where they do not exist, resulting in unprofitable investments that harm CRA in the long run. Financial institutions should not be penalized for being unable to make investments in every market and assessment area, given the complex nature of equity investments.

We believe the investment test, as it is currently applied, is too narrow in its scope and too rigid in it application. Because of the limited number of qualified equity investments and the number of institutions competing for these investments, institutions are faced with the problem of having to accept investments that do not yield an appropriate return. Many of these investments essentially become grants. Placing an expectation of every institution continually to make new qualified investments in every market is unrealistic, and ultimately too costly to be sustained. Furthermore, it does not serve the communities as effectively as would a more flexible approach.

Under the narrow definition, many activities that could benefit communities are not given consideration. Investments in organizations that do not clearly target low- and moderate-income persons or neighborhoods are not given credit, despite the fact that they are part of the fabric of a community. Different communities have different needs, and a broader and more inclusive measure is necessary to take them into consideration. Furthermore, with the passage of time, our ideas about community development may change. A more flexible, and a broader, measure is needed to deal with such variations.

Because the imperative of the investment test seems to focus on newer investments, less weight and significance is accorded the long-term community development investments already in the portfolio. An institution's willingness to make a long-term investment in a community development investment instrument represents the institution's long-term commitment to the community. The imperative placed on institutions in the investment test to constantly seek out new investments during the exam period, with less consideration given to existing investments, not only runs contrary to the realities of the limited market availability of community development equity investments, but also ignores the strong community commitment clearly inherent in an institution's decision to make a long-term investment. Therefore, we recommend that investments be counted as part of a long-term commitment to the financial institution's overall community development efforts by according them full credit for their booked value at every examination.

Finally, as noted above, we urge you to consider ways to reduce the burden of compliance with the regulations by reducing the emphasis on minutiae. Institutions are

burdened by the requirement to demonstrate, sometimes in excruciating detail, how *every* investment *precisely* meets the definition of a qualified investment. An institution should be able to certify that an investment is a "qualified investment," for example, without the need to demonstrate it down to the last dollar in every case.

Service Test Issues

The application of the service test in exams tends to focus heavily on branch distribution. While this is fairly accessible quantitative measure, it does not necessarily reflect the actual level of retail service. We believe that more weight should be given in the service test for alternative delivery channels. The provision of banking services to low- and moderate-income populations has grown beyond brick and mortar banking centers. These alternative channels include but are not limited to ATMs, online banking, telephone banking and in-store banking facilities. This can be accomplished through enhanced examiner guidance and training to provide better analytical tools for this purpose.

At the same time, we would like to see a more generous consideration of community development services through more flexible interpretation and application of the regulations. These are often a critical component in supporting lending and investment, yet the test is unnecessarily restrictive, for example by requiring that activities be tied to financial services or that a majority of those being served be low- or moderate-income. As with the other community development tests, it should be enough that the activity is targeted to LMI individuals.

Community Development Activities of Large Retail Institutions

Provisions relating to community development activities under the lending, investment and service tests should be broadened. The regulations unnecessarily restrict the activities for which consideration is given, and while there is benefit in focusing on those services that are most needed, that is a decision that often can be made more effectively on a case-by-case or market-by-market basis. There are a number of ways the Agencies can ameliorate the narrowness of the coverage.

First, we believe credit should consistently be given to a broader range of activities. In particular, Part 24 for national banks and the Federal Reserve Board's Regulation H both set forth permissible investments that cast a broader net than CRA qualified investments. Making these more consistent with CRA (and with each other) would reduce the unnecessary compliance costs associated with reconciling the different definitions, while at the same time enhancing CRA.

Second, the concept of "primary purpose" is often employed too narrowly, resulting in too restrictive a measure and an unnecessary attention to minutiae. Examiners often deny

community development loan credit for these loans on the premise that the primary purpose of the loans is not community development, even where the activity is manifestly for community development. This approach reflects a narrow interpretation of primary purpose that is not only at odds with the language in the Interagency Q&A but is almost a mechanical adherence to the more-than-50% formula. We encourage improved examiner guidance and training and a more flexible approach to the regulation to clarify the intent of the provision of rule.

In a similar vein, we support a broader definition of community development and related terms to include all areas in an assessment area or market, not just those areas identified as low- and moderate-income. The benefit to lower income individuals can be more indirect, but no less real for that. There are many activities that benefit a community and that benefit a population with a mix of incomes. Many of these activities include innovative products and alternate delivery channels of retail services not currently considered under the definition of community development.

We also believe that consideration should be given for activities conducted outside an assessment area (as is done with the Community Development Test for wholesale and *limited purpose* banks), once the financial institution has adequately addressed the needs inside the assessment area. This expansion of geographic scope would allow for greater community development efforts in all communities instead of increased, and often counterproductive, competition for scarce opportunities that may exist in certain assessment areas. However, institutions should never be required to undertake activities outside their assessment areas. The geographic underpinnings of CRA mandate that the needs of the local community are primary.

The FDIC, OTS and OCC recently announced that they would give the banks they supervise credit for community development for loans, investments and services designed to support the rebuilding the communities affected by the September 11 terrorist attack. We support this decision. Yet it is the sort of decision that ought not to be necessary on an exception basis. Terrorist attacks and natural disasters cause regional devastation that requires the entire community to support rebuilding efforts. Financial institutions, like other members of the community, participate in those efforts readily. But to the extent that a bank has a community development arm that is designed to meet needs that are defined by CRA, funds cannot readily flow to rebuild a community devastated by a disaster—at least not outside of the classic community development categories. It makes little sense to deprive the businesses that have suffered a loss, the very funds that are supposed to be for rebuilding communities.

Limited Purpose and Wholesale Institutions

In keeping with the theme of our comments, we support greater flexibility in the definition of a limited purpose or wholesale bank. Some financial institutions that otherwise qualify for the test are currently forced to employ the large retail bank test because of a slight deviation from the definition of limited purpose or wholesale. These

kinds of distinctions are unnecessary and merely add to the burden of the regulations for everyone.

Performance Context

As noted above, performance context has proved to be a valuable means of allowing examiners flexibility in their interpretation of the CRA regulations. We not only approve of its use, we believe that it is an essential component of a workable CRA examination process. Indeed, we would encourage even greater use of the Performance Context to permit institutions to demonstrate prior to the exam the needs of their markets, both unfilled and filled, the business plan for helping to meet unfilled needs, where investment opportunities were eschewed as being unprofitable or excessively risky, and any other necessary adjustments in the way the regulations might apply to their operations. That needs to be the beginning of a dialogue that permits the institution to understand the ways in which their performance context is being viewed by the exam team and ultimately affecting the evaluation.

Assessment Areas

As noted above, we believe that the geographic underpinnings of CRA are essential to maintain. For the vast majority of institutions, the notion of an assessment area tied to branch location remains a meaningful definition. It is important for both statutory and practical reasons that it not be allowed to vanish. It is fundamental to CRA that banks are responsible only to their own communities. Even as banks may sometime take deposits from a greater geographic area, they can only be held accountable for determining the "needs" of their local communities. If that nexus were eliminated, the statute would become nothing more than a complicated form of credit allocation.

At the same time, we are concerned that CRA may saturate some markets with credit—particularly in housing finance. With more dollars chasing less need for credit in these markets, the loans become unprofitable and the consumers lose the benefit of a sustainable market for credit. Performance context can be useful to offset this problem, but it does not provide a sufficient solution. In order to better regulate the flow of CRA credit, and as a safety valve where markets are over-saturated, we suggest that financial institutions get credit for lending outside their assessment area to the extent that those market needs within their assessment area have been met. This is currently the test for wholesale and limited purpose banks. It would be essential, however, that financial institutions not be required to go outside their assessment areas, nor would such lending act to expand the assessment area.

In addition, we believe that some minor changes should be made to the definition of assessment areas. In particular, assessment areas should be delineated around deposit facilities only. Customers do not originate deposits through night depositories and depository ATMs; these channels merely serve as conveniences for a financial

institution's existing customer base. For example, depository ATMs are commonly placed in customers' work places as a convenience. Often they are situated in airports and other convenient locations. The placement of such night depositories, depository ATMs, and similar unmanned facilities do not delineate the communities in which a bank's depository customer base resides and should be disregarded for purposes of defining a bank's assessment area.

Activities of Affiliates

We recommend that the current approach be retained in regard to the treatment of affiliates.

Data Collection and Maintenance of Public Files

We believe that the requirements to collect data, both for CRA and HMDA, are excessively costly at this time. A discussion of this matter –a comment letter we submitted addressing the OMB's information collection requirements—is appended to this comment letter as an attachment. No additional data collection or reporting by financial institutions can be justified by CRA.

Sincerely,

S/

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Attachment

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Room 3208
Washington, DC 20503

Re: Submission for OMB Review; Comment Request. 64 F.R. 29083 (May 28, 1999)

Dear Sir or Madam:

The Consumer Bankers Association* is grateful for the opportunity to comment on the bank regulatory agencies' joint request for the extension of the currently approved information collections contained in the agencies' Community Reinvestment Act (CRA) regulations (the "Notice").

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) calls for the agencies to obtain approval from the Office of Management and Budget (OMB) for any information collection that is subject to that statute before they collect the information. Initial estimates must be published in the Federal Register of the burden that will be imposed by the information collection. After comments are received, the agencies must publish revised estimates for comment, if necessary, and submit them to the OMB for approval.

As summarized in the Notice, to be approved by OMB, the information collection must be "the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives; not unnecessarily duplicate information otherwise available to the agency; have practical utility; and seek to minimize the cost of the collection to the agency without shifting disproportional costs or burdens to the public." 64 F.R. 29084 (May 28, 1999).

For the most part, the Notice does not address the considerations that OMB must evaluate. While the agencies attempt to estimate the overall burden, they do not argue the importance of the information collection to the agencies' functions, nor relate the burden to alternatives that may be available. They do not discuss legal requirements or program objectives. They do not argue the relative burden on the institutions affected as compared with the burden on the agencies themselves.

In fact, we believe that the data collection requirements of the regulations exceed the "least burdensome necessary for the proper performance of the [agencies'] functions to comply with legal requirements." However, without more accurate information to support its decision, we do not believe OMB can make the determination meaningfully. The estimates of the time to comply (referred to in the Notice as "burden hours") were not developed in any rigorous way, and lack even the most elementary explanation of their basis.

We are pleased the agencies recognize the greatly increased burden of data reporting that CRA now entails. The figures suggested by the first proposals published in 1998 were unrealistic in the extreme. However, we are puzzled by the approach taken in adopting

* The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer finance (auto, home equity and education), electronic retail delivery systems, bank sales of investment products, small business services, and community development. CBA was founded in 1919 and provides leadership and representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include 85% of the nation's largest 50 bank holding companies and hold two-thirds of the industry's total assets.

the new figures. According to the Notice, the agencies polled some institutions for their estimates, and then *did not rely on the results.* As it says in the Notice:

> To test the validity [of the assumptions that had been used to arrive at the first estimates], the Agencies each consulted informally with a number of institutions of varying sizes.... These institutions provided information useful to the Agencies in understanding the burden of specific aspects of the CRA information collections. However, the number of institutions consulted was too small to enable the Agencies to make useful projections regarding CRA burden industry wide. Further, because of differences in the institutions' size and geographic locations, the range of estimated burden reported by the institutions was extremely broad. *Thus, the burden estimates described in this notice are not extrapolated from the information provided by those institutions.*
>
> The burden estimates contained in this notice were developed by staff from the Agencies. [They] arrived at estimates based on the Agencies' experience in administering the CRA regulations over the past three years." 64 FR 29083, 29085 (emphasis added).

As a result, the estimated average burden hours are hard to dispute, because we have no information about what factors were used to develop them. The figures quoted may seem high to a small bank and low to a large bank. One would expect a $50 billion bank to devote more resources to data collection than a $5 billion bank; but without the figures that tell us the relationship of the burden to the size of the institution or its products and services, the averages are arbitrary and useless.

We recognize the difficulty in determining the actual costs involved. We experienced the same problem when trying to gauge the burden of the data collection and reporting requirements. As you note, institutions vary greatly in size and geography. Different institutions devote different resources to compliance. And the burden of compliance increases to the extent that an institution undertakes voluntary data collection. But the bank regulatory agencies routinely gather far more complex information from banks, so there is no good reason for the agencies to use guesswork in this case, rather than hard data.

Our experience suggests that the estimated numbers still vastly understate the time being spent at financial institutions to collect and report CRA data. When we polled some of our members, they all believed the agencies' estimates to be far below the time really devoted to this enterprise. Most of them conservatively estimated the time spent on CRA data collection and reporting (not including the equally costly burden of HMDA data reporting) in the *many thousands or tens of thousands of hours*.

However, their responses to our inquiries on the amount of time spent varied considerably. On the high end, for example, one regional multi-state holding company with assets approaching $75 billion reported that it has *an entire department* dedicated to CRA data collection and reporting (both internal and external). The institution's

representatives estimate that they spend roughly 12,000+ hours each year on CRA data collection, reporting and analysis.

Another large bank holding company, most of its banks being OCC regulated, with total assets of around $50 billion, informs us that it spends around 4,500 hours annually just on the CRA data. A $30 billion bank reported spending 2,400 hours per year.

Certainly, the amount of time spent becomes quite large for institutions with greater than $30 billion in assets. But mid-sized regional institutions (among the "large banks" reporting the data) also appear to spend much more time than you estimated. For example, one $10 billion thrift estimates devoting 800 hours annually for CRA data reporting.

It is probably safe to say that the larger the institution, the more time, in an absolute sense, it spends on data collection and reporting. But what, if any, relationship it bears to the institution's asset size is not clear. The number of charters involved, the products offered by the institutions and the choice of voluntary data collection probably all play a part. In addition, different institutions assign different priorities to the work, and devote different amounts of resources to it.

It is not clear from the Notice what activities are included in the calculation. If it is intended to include all the effort that is directly and indirectly related to the data collection and reporting requirements of CRA (as it should), the estimate understates the reality by a considerable factor. As someone at one company told us, "The sad fact is that we have relatively few employees assigned to this duty full time, but the required intervention of so many others-- programmers, loan officers, CRA officers, etc.-- accumulates to this significant total."

A meaningful figure must include the time spent by everyone, from the loan officer to the compliance officer, from the audit department to the training department. For example, it is unclear whether the following, which should be counted, were included in the burden estimate:

- *Exam preparation.* If the purpose is to discuss time for all CRA-related data collection and reporting, then the collection, organization and maintenance of information in preparation for the CRA exam (and fulfilling all the requests the agency makes during the exam) should also be factored in as well. The burden in that area has grown substantially under the revised regulation because examiners are looking at more areas in much more detail. For example, examiners now routinely want very detailed information on *each corporate contribution* to verify that it is CRA-qualified before they will give it consideration under the investment test.
- *Monitoring.* Another area that is very time consuming for institutions is tracking their own performance over time in order to make improvements prior to the CRA exam. This may include monthly and quarterly monitoring of each area of performance in

each of the three tests. Goals must be set, so that the field staff know what is expected, and periodic reports must be produced to see how well they are doing. This includes performance measures for lending in each assessment area, and activities that impact the other two tests (for example, branch location, branch closings and openings, stand-alone ATMs, etc.)

- *Compensation measures*. To encourage lending in low- and moderate-income (LMI) communities, many institutions have incorporated incentives to make LMI loans. This requires tracking and reporting to ensure proper compensation.

- *Maintaining Data Integrity*. A lot of time devoted to the information collection requirements of CRA is actually spent reviewing data for accuracy, maintaining a high level of accuracy, and—in some cases—resubmitting data. This effort increased dramatically for some banks last year, after the agencies reported encountering high "error rates" in the data. The OCC issued an Advisory, warning banks about data integrity. The banks were importuned to *redouble their efforts* to correct existing errors and produce more accurate data. The Advisory said:

> Bank management should evaluate their institution's processes for collecting, verifying, and reporting CRA data. They should also review how their employees are trained in the CRA data collection requirements. Banks should have effective internal controls for collecting the data, along with audit procedures to regularly test the internal controls and data accuracy. Data errors should be corrected before submitting data to the Federal Financial Institutions Examination Council or providing data to examiners. OCC Advisory Letter 98-16 (October 20, 1998).

Many of the alleged errors in data were nothing more than confusion over the correct reporting requirement (for example, over the question of what constituted a reportable refinancing of a small business loan). This sometimes resulted in "error" rates of 35 percent or more. Other errors stemmed from the need to do manual reporting in the early months of the new reporting requirement, because banks were given insufficient time to develop automated systems. Yet the failure to fix these errors to the satisfaction of the regulators could result in penalties and the need to correct and resubmit the data. Thus, many banks have been faced with the daunting task of scrubbing the entire data submission. This additional effort is costly and time consuming.

- *"Voluntary" Efforts*. When we look beyond the minimum requirements of CRA--which can be time consuming enough—the amount of time spent on data collection and reporting has a relationship to the institution's desire to perform well under the regulation. To get an Outstanding rating, a tremendous amount of data must be made available. For example, to score well on "innovation," an institution might track mortgage programs that involve partnerships with local government community seconds and/or mortgage credit certificate programs. In order to show the examining agency the number and dollar amount of loans by assessment area, much of the work

is done manually because it would be time consuming and costly to do the necessary programming for automation. While these may be viewed as voluntary undertakings, they are motivated by the incentives in the regulations, and ought to be considered when measuring the cost and burden of compliance.

- *Redundancy*. The OMB evaluation is supposed to take into consideration whether the information collection requirements "unnecessarily duplicate information otherwise available to the agency." We encourage the OMB to consider how the CRA small business data collection and reporting requirements duplicate the information contained in the annual Call Report. The latter is a measure of outstandings as of one date, while the former attempts to measure originations, yet they report on the same commercial loans. Because they are entirely different measures, however, different systems are required so that they can be reported separately, at a high cost in time and effort.

In short, the figures suggested in the Notice seem to bear no relationship to the realities that are addressed daily by many institutions. The real time devoted to CRA data collection and reporting appears to be far greater than the reported estimates.

Our point is not to suggest that all of CRA is tainted by this burden, but rather that (a) the amount of time devoted to data collection and reporting is far in excess of the amount estimated in the Notice; and (b) a meaningful cost-benefit analysis of CRA is not possible without more rigorous cost estimates. In the end, it is necessary for the agencies and OMB to look much harder at the amount of effort covered institutions really devote to this enterprise.

Thank you for the opportunity to comment.

Very truly yours,

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Steven I. Zeisel
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