INDEPENDENT COMMUNITY BANKERS of AMERICA

192

October 17, 2001

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

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

Docket No. R-1112
Ms. Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
ATTN: Docket No. 2001-49

Re: Community Reinvestment Act Regulations

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] is pleased to offer comments to the agencies on their review of the Community Reinvestment Act (CRA) regulations. When the banking agencies revised the CRA regulations in 1995, they planned to review the regulation five years after it was fully implemented to assess whether it was meeting its goals to: (1) emphasize performance over process; (2) promote consistency in evaluations; and (3) eliminate any unnecessary regulatory burden. This evaluation is designed to determine if those goals are being met and, if needed, what revisions might be undertaken that would help better meet those goals.

At the outset, the ICBA wishes to stress that there are costs involved with any regulatory change, since banks must revise procedures, retrain staff and change the way the way they do business to adapt to the revisions. Therefore, it is critical that any

[1] ICBA is the primary voice for the nation's community banks, representing 5,000 institutions at nearly 17,000 locations nationwide. Community banks are independently owned and operated and are characterized by attention to customer service, lower fees and small business, agricultural and consumer lending. ICBA's members hold more than $486 billion in insured deposits, $592 billion in assets and more than $355 billion in loans for consumers, small businesses and farms.

regulatory change be weighed against the potential costs. However, there is room for improvement in the existing CRA regulation. While some revisions to the regulation should be made, other changes can be effected through improved examination procedures and examiner training and through clarification of regulatory interpretations.

Despite the regulatory changes made in 1995, the Community Reinvestment Act still presents a significant regulatory burden for community banks. It cannot be stressed strongly enough that community banks are, by their very nature, a vital component of their communities. The viability of a community bank is closely intertwined with the vitality and viability of the community. Community banks strongly support the goal of CRA: to reinvest in their communities. However, the paperwork and regulatory burden takes away from the ability of community banks -- which have small staffs and limited resources -- to serve their communities.

Summary

The ICBA strongly urges the agencies, first and foremost, to increase the size of banks eligible for the small bank examination to reflect the many changes in the banking industry since the current CRA regulation was adopted in 1995. We recommend the asset limit be increased from the current $250 million to at least $1 billion, and preferably $2 billion. This one change for community banks would do more than any other to foster the goals of this CRA review – to insure the regulations emphasize performance over process and eliminate unnecessary regulatory burden.

Second, the ICBA recommends that adjustments be made to give CRA credit for a broader range of activities by banks. For small banks, the focus should continue to be on lending, but additional credit should be allowed for other activities. For large banks, we recommend a greater emphasis on lending performance and less on investment, an expansion of the activities eligible for credit under the investment and service tests, and a better definition of what constitutes a "community development" activity.

The cost for large banks to collect data on small business and small farm loans that the current regulation requires cannot be justified by the benefits of the information provided, and therefore the ICBA recommends that it be eliminated.

The ICBA also does not find it appropriate to distinguish between purchased loans and loans originated by the bank at this time, but *if* any distinction is made, it should be a slight discounting for loans that are purchased that are far outside the bank's assessment area.

One area that could be improved with minimal disruption to banks is better examination procedures and training. This is especially important for the application of the performance context – and that analysis should be more fully shared with banks both before and during the examination. We do not see a need to change the current basic approach to assessment area, based primarily on branch location. However, the

ICBA does recommend that greater latitude be allowed for banks to designate low- and moderate-income areas; this can be especially important in some small, rural communities where these areas are not easily segregated. For banks that operate in unique ways, such as Internet only banks, the ICBA believes that special rules or interpretations need to be developed that address how those banks function, since they do not readily meet the qualifications that were established under CRA in 1995.

Another issue that needs to be addressed through improvements to the examination process has to do with the ratings that are assigned to banks. The perception clearly exists that it is become more and more difficult for small banks to achieve an "outstanding" rating. This acts as a disincentive for banks that defeats the underlying purpose of CRA.

Threshold for Small Bank Streamlined Examination Should be Increased

The most successful innovation of the 1995 CRA revisions was the creation of a "small bank" examination.[2] Banks eligible for the small bank examination undergo a much more streamlined examination than larger banks. For eligible banks, this one change greatly reduced documentation requirements and regulatory burden, reduced the time needed for examinations, and clearly placed the emphasis on performance over process.

To compensate for the drastic changes in the industry since 1995, the ICBA strongly urges the regulators to change the asset threshold for banks eligible for the small bank examination to at least $1 billion, but preferably $2 billion. Since 1995, there have been substantial changes in the banking industry. Interstate banking has flourished, producing a great deal of merger activity, both interstate and intrastate. Since 1980, there have been over 7,000 mergers of financial institutions, and although this number has recently diminished, as recently as 2000 there were just over 450 mergers in that one year alone.[3] In 1980, there were no mergers or acquisitions of banks in which both parties had over $1 billion in assets, but recently there have been over 40 mergers in which the parties each exceed $1 billion in assets,[4] and in the first six months of this year, there were nearly 20 mergers where both parties to the merger held over $1 billion in assets.[5]

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[2] The regulations define a small bank as one with assets of $250 million or less that is independent or affiliated with a holding company with less than $1 billion in assets.

[3] FDIC Statistics, *Quarterly Profile*, June 30, 2001.

[4] FDIC Statistics, *Quarterly Profile*, September 30, 1998.

[5] www.americanbanker.com

This merger activity has resulted in the creation of large national financial conglomerates. For the first time in United States history, one bank now stretches from coast-to-coast. At the end of the 1998, the top 100 banks in the United State controlled 75 percent of banking assets, up from 51 percent in 1980. And the largest of the financial conglomerates, the top five banks, controlled 23 percent of banking assets at the end of 1997. This is a tremendous increase in asset concentration in twenty years.

When CRA was adopted, a bank with $10 billion in assets was a large institution. Now, banks reach into the *hundreds* of billions in assets. The merger of Citicorp with Travelers Insurance produced a company with over $750 billion in assets, while the merger of NationsBank with Bank of America produced a nationwide banking enterprise holding 8.5 percent of ***all*** bank deposits in the United States. To say that a bank with $251 million in assets is the same as one of these monolithic conglomerates is absurd, but the CRA regulation does not distinguish between a $251 million bank and a $251 billion bank. Both institutions are subject to the same CRA review standards. But the burden is disproportionately heavy for the $251 million community bank.

To be equitable, banks should be evaluated against their peers and not in the same context as a monolith many times their size -- with many times the compliance resources. It would be only fair to increase the size of banks eligible for the small bank streamlined examination. There is no need for a legislative change to make this revision, since regulators have the authority to redefine what constitutes a "small bank."

Following passage of the Gramm-Leach-Bliley Act (GLBA) by Congress in 1999, banks with less than $250 million in assets undergo CRA review less frequently, either every four or five years, depending on their most recent CRA rating. The frequency of examination cycles could not be changed without legislative action. As a result of the GLBA provision, under the current regulation, not only does a bank face increased burden when it passes the $250 million milestone, it is also subjected to the additional burden of more frequent examinations. Increasing the size of banks eligible for the streamlined examination would alleviate some unnecessary burden for community banks with over $250 million in assets, but they would still be subject to more intensive CRA scrutiny than smaller banks because of their more frequent exam cycle.[6]

The holding company size requirement for the small bank exam should also be revised. Under the current qualifications, if a small bank is affiliated with a holding company, the holding company can not be larger than $1 billion in assets. The ICBA urges the agencies to eliminate the holding company qualification as an unnecessary complication. Many banks operate independently within the holding company structure, yet this qualification penalizes them unfairly merely because they are part of the holding company. Moreover, with the additional qualification of holding company size, there is an additional layer of regulatory burden in determining eligibility for the small bank examination. At a minimum, if the agencies decide that the holding company

[6] This would also help reduce the strain on regulatory resources.

qualification cannot be eliminated, the ICBA recommends that the size of the holding company qualification should be increased to $5 billion in assets.

This revision would treat community banks more fairly, would significantly reduce regulatory burden, and would compare banks more fairly with their peers.

Other Issues Affecting Small Banks

Bankers that undergo the small bank streamlined examination report that documentation requirements have been significantly alleviated and the time that examiners spend in the bank has been greatly reduced, meaning that there is less disruption of the daily activities of the bank. However, they also report that sometimes the focus on "numbers" becomes somewhat rigid.

One concern with the current examination process is that it places too much emphasis on the loan-to-deposit ratio. This is one area where better examiner training would be especially beneficial. The loan-to-deposit ratio should not be evaluated without careful consideration of the performance context of the individual institution. Loan demand, the type of community, and current economic conditions should all be carefully taken into account in this evaluation. For example, many community banks are involved in agricultural lending which has a very seasonal demand, and that factor must be weighed into the equation. While the loan-to-deposit ratio is an important criterion, it must be properly tempered.

Ratings Systems

Many community banks contend that it has become increasingly difficult to attain an "outstanding" rating. Some community banks evaluated under the small bank examination procedures that previously received "outstanding" ratings for many years have been downgraded to "satisfactory." Some report a developing consensus that it is impossible to achieve an "outstanding" rating. Others report that the extra effort of recordkeeping and burden to justify an "outstanding" is not worth the cost. For example, one bank reports making extraordinary efforts to expand its lending, increasing its loan-to-deposit ratio from 60 percent to 85 percent, but being told by their examiner that it would be nearly impossible to achieve an "outstanding" in the next exam. Some bankers perceive this to be a prejudice on the part of the examination staff – that some regional offices just will not grant a small bank an "outstanding" rating.

In 2000, the ICBA conducted an informal survey of a small sample of community banks on this issue in response to a Congressional request. Of those responding, 58 percent said they were generally content with a "satisfactory" and did not strive for "outstanding." These bankers explained that they do not perceive a demonstrable benefit from the extra paperwork involved. One banker commented that, "our bank performs all aspects of CRA for our customer service – our customers' concepts of our community service is important to our bank – government paperwork is not." Two bankers reported being told by examiners that they could not attain an "outstanding"

because they lacked low- and moderate-income neighborhoods or populations in their market areas. Another responded, "no additional authority is granted if you have an outstanding – the extra effort is, in essence, window dressing – costly in terms of personnel expense." These comments suggest that community banks find that the cost of even trying for an "outstanding" CRA rating exceed any intangible benefits.

Other feedback from bankers suggests that the performance context has been given short shrift or that examiners do not feel it possible to award a small bank an "outstanding" unless the bank submits to the large bank examination process where investment and service performance is reviewed in addition to lending. This defeats the purpose of the small bank examination process and the underlying purpose of the statute. If community banks feel that all they will ever merit is a "satisfactory" rating, then the bank must weigh the benefits against the cost of striving for an "outstanding" rating. Some community banks report they have given up striving for an outstanding rating, a situation that former FDIC Chairman Donna Tanoue termed "unfortunate."[7] Fairly applied, the small bank examination process should not discourage banks from striving for an "outstanding" rating.

Large Banks: The Lending, Investment & Service Tests

Large banks are evaluated on a three-prong analysis: lending, investment and service, taking into consideration how each of these activities are responsive to community needs. However, CRA ratings are designed to give primary emphasis to the bank's lending activities, based on the principle "that lending is the primary vehicle for meeting a community's credit needs." Some have questioned whether lending should be given an even greater role in a large bank's rating, while others suggest that the rating should be more flexible and allow greater emphasis on the other factors, such as services provided to the community, based on the bank's particular situation.

The current regulations do not properly balance the three tests. The primary problem with the current weighting system is that too much emphasis is given to investments. This is especially difficult for banks in areas where there are insufficient investment opportunities – a definite problem in smaller, more rural communities.

The existing analysis also fails to take into account many of the services and other activities that these banks provide for their communities. Community banks – being integral components of the fabric of the local community – often undertake activities in the local community that have a community development component that go

[7] Remarks by Donna Tanoue, FDIC Chairman, before the Bank Administration Institute Conference on *Community Development Lending and CRA Strategies for Community Banks*, June 19, 2000.

unrecognized because they are not immediately financial.[8] The ICBA urges the agencies to re-evaluate the types of activities that are eligible for CRA credit, and we would be happy to work with the agencies on expanding the types of activities that are credited.

We also recommend that greater latitude be given to recognizing activities that take place outside of a bank's assessment area. For example, while current interpretation allows CRA credit for investments outside the bank's assessment area that benefit the bank's assessment area as well, the ICBA suggests this be given even broader allowance. This is especially important in the area of investments, where banks may find it difficult to find suitable investment opportunities, especially in smaller communities, or where competition for these investments precludes a community bank's involvement. If the needs of the bank's assessment area have been reasonably met, it should be allowed credit for activities outside the investment area without analyzing whether there is some peripheral benefit to the bank's assessment area as well.

Lending Test. A bank is evaluated on the loans originated and purchased across and throughout its assessment area. Examiners consider the geographic distribution of loans, the characteristics (such as income-levels) of borrowers, community development lending, and the use of creative means to lend to low- and moderate-income borrowers.

This evaluation, as currently structured, effectively assesses whether a bank is meeting the credit needs of its community, and so the ICBA does not recommend that any changes be made at this time.

Investment Test. Large banks are also evaluated on their community development investments. Examiners consider the dollar amount of qualified investments, their creativity and responsiveness to community development needs, and the degree to which they are not provided by private investors. The original premise was the investments could help meet community credit needs as much as lending activities. Some, though, argue that investments should only be considered as a supplement to a bank's lending activities.

One concern is the availability of investment opportunities and the ability of smaller institutions to compete for them. Another concern is the need to continually vary programs to make them innovative to satisfy examiners when existing programs function perfectly well.

The ICBA recommends that the investment test be revised to better reflect a bank's record of helping to meet the credit needs of its community. For example,

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[8] Some of these activities include participating in projects that bring new businesses to the community, investments in general obligation municipal bonds, and working on community development activities that do not have a benefit restricted to low- and moderate-income areas.

municipal development bonds can be a crucial activity in many small communities that benefit the entire community, and should be recognized under CRA.

One of the problems that confronts many banks, especially smaller institutions, is the availability of investments within the bank's assessment area. Where investments are available, the competition for limited opportunities can be intense. Or, where investments are available, safety and soundness concerns may make them undesirable. These factors may cause the bank to make investments outside the assessment area to garner CRA credit when the funds might be better used locally, e.g., for increased lending to low- and moderate-income borrowers. The ICBA urges the agencies to expand the investments that qualify under the investment test to improve the opportunities for banks to keep funds within the community. One solution we recommend is that the agencies consider eliminating the investment test as a requirement and making it optional, such that a bank could be given extra credit for its investment activities.

Service Test. Under this analysis, examiners primarily consider a bank's branch distribution, particularly in low- and moderate-income areas, as well as the bank's use of alternate delivery channels (such as the Internet and ATM networks) to reach low- and moderate-income geographies. The agencies also consider the extent and range of the bank's community development services under this test.

Some contend that this test currently places too much emphasis on the bank's brick-and-mortar services. Others find such an emphasis appropriate, especially in low- and moderate-income areas where customers may not have access to electronic delivery channels. Some have proposed that not only the delivery mechanism, but also its effectiveness in reaching all segments of the community, should be taken into consideration.

While the physical location of a bank's branches is an important element in the service test evaluation, the ICBA recommends that the service test also take into account alternative delivery systems, such as the Internet. Alternative service mechanisms enhance a bank's ability to serve all segments of the community. It must also be recognized that it is not always possible to identify whether the users of these services are low- or moderate-income, but providing these services provide a general benefit to the community.

The ICBA also urges that credit be granted under CRA for special-purpose accounts, such as those designed for low-income depositors. These accounts, such as low or no fee checking accounts or special electronic benefit transfer (EBT) accounts, demonstrate that the bank is striving to meet the needs of all segments of the community. And, the ICBA agrees that consideration should be given to how well these services function in meeting the needs of low- or moderate-income individuals. However, that assessment should not be based on additional data collected on account-holders, as that would be inordinately burdensome. Rather, it could be based on the number of individuals that hold these accounts.

It is also important to expand the recognition allowed under the service test for activities that a bank undertakes that go beyond financial services. For example, if a bank participates in activities that benefit a recognized community development group, even if that activity is not directly financial in nature, some recognition of that activity should be given.

"Community Development" Definition. For purposes of the lending and investment tests, the regulation currently defines community development as affordable housing for low- and moderate-income individuals; community services targeted to low- and moderate-income individuals; economic development activities; and activities that revitalize or stabilize low- or moderate-income areas.

While the current definition of community development activities is appropriate, as noted above, the ICBA is concerned that banks engage in activities that go unrecognized in the CRA evaluation but that provide a benefit to the community. For example, participation in industrial development or other activities that bring new businesses into the community are beneficial to the entire community and should be recognized under CRA. The ICBA urges that economic development activities be recognized if they benefit the community at large, even if they do not specifically benefit a low- or moderate-income area. Trying to identify a low- or moderate-income area can be problematic in some areas. For smaller communities or those located in rural areas, readily identifiable low- or moderate-income census tracts simply do not exist. Instead, individuals blend across the community such that high-income individuals and low-income individuals may reside side-by-side. Therefore, *any* economic development activities that benefit the community at large should be given credit.

We also recommend that, as long as activities outside a bank's assessment area are not undertaken to the detriment of activities within the bank's assessment area, the bank should be given credit for that activity, no matter where it is located.

Large Bank Data Collection

The CRA regulation requires banks ineligible for the small bank examination to collect and report data on their small business, small farm and community development loans. The authority of the agencies to collect this data has been questioned by ICBA and others, and many consider the data not meaningful.

Moreover, many larger community banks find the data collection the most burdensome element of the current CRA regulation. ICBA members tell us that the data collection requirement is very cumbersome and does little to represent the bank's efforts in meeting credit needs. Bankers suggest that, despite all the effort that a bank expends to collect the small business/small farm data, it provides little more meaningful information than what is already available from Call Report data. As a result, a requirement that is both burdensome and time consuming provides few benefits, and those that are provided are clearly not justified by the cost. Therefore, the ICBA recommends that this requirement be eliminated.

All Banks

Purchased Loans

The agencies ask whether examiners should distinguish between loans that a bank originates and loans a bank purchases.

The ICBA urges the agencies to continue to give equal credit for both loan purchases and loan originations. Lending activities that are very beneficial to low- and moderate-income communities may be conducted by means of loan syndications and participations – the type of lending that smaller banks might not be able to provide acting alone. Discounting loan participations (purchased loans) for CRA credit might serve to discourage banks from these types of activities.

Second, giving credit for purchased loans allows banks to expand the opportunities for lending while still providing credit under CRA. This can be especially important for banks that operate in areas where loan demand is minimal.

Third, purchasing loans frees up capital for the seller to originate additional loans. Discounting the credit allowed under CRA for purchased loans could have the effect of discouraging the availability of capital to lenders that have the opportunity to originate new loans.

If any distinction is drawn between loans that a bank originates and loans that a bank purchases for CRA purposes, it should be very limited. If the purchased loan is well outside the bank's assessment area, then the credit allowed for the purchased loan might be discounted. However, it is also important to acknowledge that any movement in this direction is likely to generate unnecessary complexity.

Performance Context

One of the major revisions in 1995 was to create the "performance context" standard for CRA examinations. Using this benchmark, examiners evaluate a bank based on its own performance context, i.e., characteristics of the bank itself, its community and its peers. Some argue that the analysis of the performance context should be more specific and quantifiable. Others say this would make the analysis too rigid, and that examiners need flexibility to properly apply the performance context to each bank, especially in light of the wide variety of markets and communities across the nation.

Generally, the ICBA finds the performance context analysis is a useful tool that forces the examiner to understand the bank. However, in the interest of transparency, and to help bankers better understand how the performance context is used, examiners should share the performance context information they use with the bank. In the examination report, the examiner should provide sufficient detail regarding how the performance context was developed and on what it was based. Examiners should also discuss the performance context with the bank as it is being developed so that the bank can provide additional information or correct any misperceptions the examiner might

have. This can be especially significant for banks located in regions of the country where it is not readily apparent which other banks are considered their "peers."

Performance Over Process

The 1995 revisions placed the emphasis on performance over process, a step that has been successful and that the ICBA strongly supports. However, we also recommend that the agencies explore mechanisms that incorporate into the CRA evaluation process a recognition of efforts made by a bank that do not result in an actual loan or some differential for those loans which require more intense efforts on the part of the bank. Perhaps one approach would be to allow the examiner to recognize these efforts and to grant the bank some extra credit for the steps the bank is taking, once the essential analysis on bank performance has been conducted.

Assessment Area

The assessment area is the geographical area that essentially defines the bank's market. Generally, the assessment area is drawn around those geographies where the bank has branches and offices. However, considering the many outreach methods that banks can use, including the Internet, some argue that this does not sufficiently account for a bank's lending and deposit-taking activities, and that a bank should be subjected to a CRA evaluation wherever it takes retail deposits or makes retail loans, regardless of physical presence.

The current provisions of the assessment area provide a reasonable and sufficient standard for designating the communities within which the bank's activities will be evaluated. At this point, the ICBA does not recommend any changes to the current system. Examiners currently have the authority to question the assessment area if it is too narrowly drawn, an authority the ICBA agrees is appropriate. If a bank is serving a significant customer base outside the delineated assessment area, then it may be appropriate for the examiner to question the assessment area and require that it be re-drawn. However, all banks are likely to provide some retail products and services to customers outside the bank's assessment area, which is appropriate. Examiners should question the bank's assessment area only if a significant percentage of those services are being provided to customers outside the assessment area on a regular and continuing basis.

Some banks – especially smaller banks evaluated under the streamlined examination – report that they establish an assessment area based on the area the bank determines it can serve adequately. At times the bank would like to make loans outside the assessment area, sometimes as community development loans. However, making loans outside the assessment area detracts from the ratio of loans within the assessment area, possibly earning a downgrade from the examiner. Redefining the assessment area to include areas where these loans are made can create an area too large for the bank to adequately serve. The solution is to stop lending outside of the assessment area. While this solves the CRA examination problem, it defeats the purpose of encouraging banks to make loans, including community development loans. If the performance context is properly applied, banks should be allowed to lend beyond

the borders of their assessment areas without penalty, especially when the bank is providing service to an existing customer (e.g., a developer working on a construction project outside the bank's assessment area).

Some smaller community banks – report that they experience difficulty designating low- and moderate-income areas within their assessment area. In many cases, low- and moderate-income areas within the community are relatively small and/or closely interwoven with other areas of the community. While larger community banks find the use of census tracts helpful in designating low- and moderate-income areas, smaller community banks report that census tract information may be non-existent or difficult to apply. The ICBA recommends that the examination procedures be adjusted, through the performance context, to take these factors into account.

Finally, a growing number of banks operate very differently than those that existed when the current CRA regulations were adopted. These include banks that operate exclusively over the Internet without a physical presence and those affiliated with large insurance companies that rely on a nationwide sales force of agents to distribute banking products. Special rules on assessment area may be needed for these institutions to better reflect their activities. They should be assessed on where they deliver products and services. Using geographical locations to delineate an assessment area for these banks may not adequately assess their CRA performance. Perhaps one solution would be to evaluate these institutions based on their lending and service to low- and moderate-income individuals and their community development activities, wherever they occur, without forcing them to create an artificial assessment area.

Public File

All banks are required to maintain public files on their CRA performance, including written comments from the public, the public section of the bank's most recent CRA evaluation, a list of bank branches, a list of branches opened or closed in the past two years, a list of services (including hours of operations) that the bank provides, a map of each of the bank's assessment areas, and any other information that bank opts to include. The CRA public file must also include the bank's HMDA data for the last two years. Small banks must include quarterly loan-to-deposit ratios for the past year. And, if a bank has a less than satisfactory CRA rating, the bank must include an explanation of what it is doing to improve its CRA performance.

Some contend that this is a burdensome exercise, especially since few members of the public actually ask to see the public file. However, others – most notably community activists – maintain that this information is critical to assessing how the bank is serving the public's needs.

The ICBA agrees with those that contend that the creation and maintenance of the public file is a burdensome exercise, especially since the only time the file tends to be reviewed is by the examiner. It is extremely rare for any member of the public to ask to see the public file – if at all. The ICBA strongly recommends that banks be required

to maintain only one public file at the main office. The public file could then be made available on request by either contacting the main office directly or by making the request through one of the bank's branches. Larger banks that cross state lines could designate one location in each state where the file can be maintained and made available.

The Examination Process

One of the key differences in the CRA burden since the 1995 revisions is the examination process. Overall, small banks report that the time of examination has been greatly reduced, and they appreciate the emphasis on results rather than attendance at meetings. They also appreciate the fact that the examination is based on data that is relatively easy – if cumbersome – to produce. Large banks report that the overall regulatory burden has not been reduced by the 1995 revisions – merely shifted. For example, while they no longer have to document meetings with community groups and community officials to demonstrate CRA activities, there are difficulties in meeting the investment criteria that examiners have established. They also report inconsistencies between examiners on what constitute valid community development activities or what meets the "innovativeness" criterion. And, they must collect data on small business and small farm lending that they do not perceive to be meaningful. Clearly, expanding the definition of what constitutes a small bank would help alleviate this regulatory burden.

As we have in the past, the ICBA urges the regulators to continue to work together to ensure that examiners are well trained. While the focus on lending and actual performance is a distinct improvement, there are still qualitative elements in the current examination procedures that necessitate the exercise of examiner judgment. Perhaps more important, examiner training in the development and application of the performance context is critical – and examiner analysis and findings need to be communicated to bankers.

However, it appears that some examiners are not undertaking the qualitative analysis that the regulation's drafters identified as critical to the success of the revisions but instead are slipping into a pure number crunching analysis. Reports from bankers also suggest the reliance on paperwork is slowly creeping back into the process. Just as some examiners seem to place less reliance on the performance context in their reviews, others seem to be emphasizing bank-generated reports. Examiners must be reminded that paperwork should not take precedence over performance standards; otherwise, they will help make the case that CRA regulation is too burdensome and does not serve the purpose of its underlying statute.

Conclusion

The ICBA welcomes this review of the CRA regulations. In our view, there is room for improvement in the current CRA process.

We strongly urge the agencies to increase the size of banks eligible for the small bank streamlined examination in order to decrease regulatory burden and to reflect the changes experienced by the industry since 1995. The size limit should be increased to at least $1 billion, preferably $2 billion, in assets. The ICBA also recommends that the qualification of holding company size be eliminated, or at a minimum, increased to $5 billion in assets. The small bank examination process has worked well, and it is time to expand its burden reduction benefits to larger community banks.

The ICBA encourages the agencies to continue to offer guidance through the Q&A's published by the FFIEC. While the emphasis on performance over process has been successful, we also encourage the agencies to recognize efforts that have not directly resulted in loans or recognize those loans that require additional effort on the part of the bank. We also encourage the agencies to recognize a broader variety of investments and services, a step that can be taken through interpretive guidance or revised examination procedures.

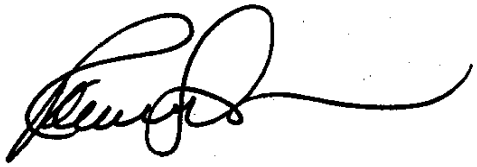
The ICBA also recommends that examination procedures be improved. The perception among bankers that an "outstanding" rating is out of reach for banks examined under the small bank exam is a serious problem that must be addressed. In addition, the application of performance context needs to be improved so that the concept truly works as intended – and examiners should communicate with bankers about how the performance context analysis was reached so that bankers have a better and more complete understanding of this tool.

The ICBA does not support the creation of a distinction between purchased loans and originated loans. And, while the current essentials used to define an assessment area are working, the ICBA recommends that difficulties in defining low- and moderate-income tracts within an assessment area be addressed, possibly through the performance context analysis. And, the ICBA recommends that the regulation be changed to only require a bank to make its public file available at its main office, or one office in each state where it operates.

Each of these suggested changes will help meet the goals of performance over process and the elimination of unnecessary regulatory burden.

Thank you for the opportunity to comment. Should you need any additional information, please contact Robert Rowe, ICBA's regulatory counsel, at robert_rowe@icba.org or 202-659-8111.

Sincerely,



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Chairman