New Clear and Conspecious Requirements for Disclosures in REgulatiosn B, E, M, Z, and DDFrom: Penny Asher [penny.asher@nebankers.org]
Sent: Friday, January 21, 2005 2:34 PM
To: regs.comments@ots.treas.gov.
Subject: No. 2004-53

January 21, 2005

Regulation Comments

Chief Counsel's Office

Office of Thrift Supervision

1700 G. Street, N.W.

Washington, DC 20552

Re: OTS Community Reinvestment Act Proposal

Ladies and Gentlemen:

The Nebraska Bankers Association ("NBA") appreciates this opportunity to provide comments to the OTS' proposed rulemaking regarding the Community Reinvestment Act "Proposal"). NBA is a professional nonprofit organization representing 257 of the 259 commercial banks and 9 of the 16 savings and loan associations in Nebraska. NBA strongly supports the proposal to permit large financial institutions to determine the relative weights to be applied to the three CRA sub-tests in deriving the overall CRA rating.

Proposal consistent with CRA

The Proposal is entirely consistent with the original purpose of the Community Reinvestment Act, which is to encourage depository financial institutions to help meet the credit needs of the local communities in which they are chartered. (12 U.S.C. 2901). We believe the Proposal, which permits institutions to align their community reinvestment activities in accordance with their business focus and their experience and expertise is also consistent with, and is an extension of the original purpose underlying the CRA. Furthermore, this goal is achieved without eliminating investment and service activities.

Nowhere in the statute is there authority for the federal banking agencies to prescribe regulations related to investments and services. These subtests were created by regulation, and we believe the agencies exceeded their statutory authority in creating them. While there arguably exists a need to tailor CRA requirements to certain, non-traditional institutions that may not provide the type of lending contemplated under the law, we do not believe it is appropriate to impose industry-wide any requirements other than those permitted by the statute.

The irony is that these exceptions created to accommodate special-purpose institutions became the rule for all institutions, even if many institutions have no particular expertise in, for example, investments. Thus, a federal savings association, which typically places a great emphasis on

mortgage lending, is currently permitted to count only 50% of its lending toward its CRA rating. This is a distorted result and one that forces institutions to engage in activities that are inconsistent with their business focus and even their expertise.

Imposition of sub-tests burdensome for many institutions. The substantial majority of depository financial institutions engage primarily in lending activities. Outside of CRA requirements, many conduct investment activities only to the extent of managing assets and liabilities as necessary to balance lending and liquidity. Because of the fairly rigid 3-part CRA sub-test scheme now in effect, many banks are compelled to seek out investment opportunities that have little or no relation to the bank’s business model.

The need to venture out to identify and evaluate investment opportunities that are suitable for CRA purposes is a time-consuming process. Many banks do not have the personnel and supporting infrastructure already in place to conduct the necessary due diligence to perform these functions. As a result, a financial institution may venture into investments for which they lack sufficient internal expertise to properly handle. In addition, these challenges are compounded by competition from larger institutions that have far greater resources and therefore have greater success in making the most suitable investments.

The result is that for too many banks, investments are sought out and made purely to satisfy regulatory requirements, and it is uncertain whether such activities necessarily benefit communities more than straight lending would. Under the proposal, financial institutions would have the flexibility to focus

more on those activities that are more aligned with their expertise and resources.

On the other hand, the Proposal is ideal because if an institution has successfully made CRA investments and those investments have benefited communities in the manner contemplated under the statute, then those institutions would be permitted to continue to make them and earn credit for them. NBA also supports maintaining a minimum 50% weight given to lending as, again, credit is the central tenet of the statute.

Finally, NBA agrees that the Proposal is more consistent with the "performance context" approach in that institutions would not be subject to evaluation under the fairly strict 50-25-25 rule now in place. If the performance factors currently applied in the regulation suggest a different ratio or balance among the three tests, then an institution would be free to adjust its activities accordingly.

Deference to institution. How much deference the OTS should give to an institution's determination is an important policy consideration. First, as discussed above, any limits should be based on the overall purpose of the statute. Thus, as long as an institution is meeting the credit needs of the communities it serves, there should be no basis for a material criticism of an institution's election. On the other hand, the OTS in its capacity of regulator should retain a degree of discretion to challenge an institution whose activities it deems to undermine the purpose of CRA. While NBA is not in a position to identify with specificity the circumstances in

which an institution may be challenged, we note that the OTS currently gives deference to institutions in determining their performance context.

Elimination of investment test. The OTS also asks whether the investment test should be eliminated in its entirety. While NBA believes there is no statutory basis for the investment test,

investment activities nevertheless have been part of CRA for a number of years, and have produced many positive outcomes. As long as the OTS adopts a rule that permits institutions to determine their own weighting, and such determination is accorded deference, NBA does not perceive the need to eliminate the investment test. Indeed, preservation of the investment test (under the conditions articulated) would encourage those institutions that have made successful investments to continue to do so.

Community development. NBA also supports liberalization of the concept of "community development" as applied to rural areas. We agree that lending and investment opportunities in rural areas that are qualified for CRA consideration

can be limited, and in such circumstances, a financial institution can be left with few options on complying. We support the proposed clarification as a means of relieving this burden, that is, such activities that benefit persons and areas in rural locations can be qualifying even as to non-low- and moderate-income persons or areas.

NBA appreciates this opportunity to submit this letter on the OTS Proposal. The Proposal would give financial institutions needed flexibility in complying with the CRA, and yet remain consistent with the statute's purpose. For these reasons, NBA strongly supports the Proposal. If you have any questions for comments, please feel free to contact the undersigned.

Sincerely,

George Beattie

President

george.beattie@nebankers.org

/jsh