



January 24, 2005

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

Attention : No. 2004-53

Re: Community Reinvestment Act – Community Development, Assigned Ratings
69 FR 68257 (November 24, 2004)

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ welcomes the opportunity to comment on the proposal issued by the Office of Thrift Supervision ("OTS") that would provide additional flexibility to savings associations in meeting the requirements imposed by the Community Reinvestment Act ("CRA").² This proposal would revise the definition of "community development" and would provide additional flexibility in assigning CRA ratings for large retail savings associations.

ACB Position

ACB strongly supports all aspects of the proposal of the OTS and commends the OTS for proposing the rulemaking. We believe that the changes would provide needed regulatory relief for savings associations. We support the goals of the CRA, but have long been concerned about the burden that is imposed by a regulatory structure that is rigid and inflexible and does not take the differences in communities into account. Further, we are concerned that the original purpose of the statute has been distorted in an effort to develop regulatory requirements that do not adequately address the variety of charter types and the changes in the industry. Despite our support for uniformity of regulation, we believe that it is more important that the regulation and accompanying guidance provide enough flexibility for all institutions to be able to comply without unnecessary burdens.

ACB views the proposed changes as real regulatory relief. We appreciate the OTS's creative and innovative efforts to help savings associations solve the conflict that

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 69 Fed. Reg. 68257 (November 24, 2004).

sometimes arises when trying to comply with a regulation and yet meet the needs of individual communities. Providing the flexibility to determine how much weight should be assigned to the lending, investment and service tests will permit large savings associations to make choices involving the community that are based what it needs, whether it is lending, investment or service, and not governed by goals that are established elsewhere.

Background

The federal bank regulators made sweeping revisions to the regulation that implements the CRA in the mid 1990's and at that time the agencies agreed that a review of the regulation would be done in five years. This proposal and the earlier action of the OTS to amend the definition of a small institution are a result of that review. We believe that given the nature of the changes in the financial services industry not only in the past decade but also in the years since the enactment of CRA, these and other updating changes are necessary. We renew our earlier request for a more flexible regulation that permits insured institutions to respond to changes in their communities and in their competitive environment.

For example, the statute does not contemplate an environment in which lending and deposit taking frequently is done electronically and community is a much broader term than the immediate surrounding geographic area. The types of services that insured institutions are permitted to offer have expanded and include a wide array of products. All of these changes suggest that the agencies, insured institutions and community groups must think much more flexibly and creatively about what it means to serve the credit needs of the community. A regulation and examination process that requires rigid adherence to a set of benchmarks established even ten years ago will not work in today's environment.

However, we reiterate our earlier suggestion that agencies not make changes to the regulation without considering the compliance burden of regulatory change and whether the change will achieve meaningful benefits. Any changes to the regulation must also take into account the changes in the industry, and must recognize that it is no longer possible to develop a regulation with which every institution in every community can easily comply. Community reinvestment is local and in many cases very specific. Any CRA regulation must be flexible enough to accommodate all situations. We believe that the changes in the proposal are examples of changes that satisfy this test.

We also believe that the industry will continue to evolve at a rapid rate and that rather than amending the regulation to keep pace, the agencies should retain as flexible a regulation as possible. They should make changes to the interpretive guidance and examination procedures and provide examiner training that will help examiners understand the innovative and complex transactions that frequently are involved in community lending. A more open, consultative examination process would be welcome. Examiners must be able to look at the institution and what it does in the context of the whole community and what it needs, not just at the opportunities for community banks to

finance housing. ACB cannot emphasize enough the importance of examiner training and guidance.

Assigned Ratings

ACB strongly supports the proposal that would provide much needed flexibility to large retail savings associations in complying with their CRA requirements. We believe that providing savings associations with the flexibility to determine how activities will be weighted during the examination is very beneficial to the institution and to the community. The needs of each community are different and this proposal will permit savings associations to make a determination as to how each category should be counted as part of the CRA examination. This flexibility is especially necessary for savings associations that continue to be focused primarily on mortgage lending from a business perspective and because of statutory limitations. We believe that continuing the requirement that the lending test be counted for at least 50 percent of the total is appropriate, especially because the original purpose of the CRA was to serve the credit needs of all aspects of the community.

ACB members are committed to making credit available to the communities in which they operate. Community banks would not survive if they did not serve the financial services needs of their communities and their customers. Communities themselves are each different and what is successful in meeting the needs in one geography is not successful in another. If regulations cannot be community-specific, then examiners must be that much more flexible in looking at what the institution is doing and the impact that it has. The proposal provides a good alternative to the current rigid three-pronged test. Providing each savings association the ability to determine where to spend the scarce resources is appropriate.

ACB believes that the performance context of a community bank's compliance with its CRA obligations is an important starting place for the evaluation and this proposal is an example of how to use the performance context to achieve the goals of the statute. The current regulations provide that an institution's performance is evaluated when looking at the information about the institution, its community, its competitors, and its peers. Such an evaluation makes sense to the extent that it recognizes that communities and institutions are different. The difficulty is balancing the quantitative and the qualitative measures. Providing specific quantifiable goals can make it easier for the examiner to determine whether the institution has met its requirements, but it takes away the incentive to undertake innovative and complex projects. We support the ability of large savings associations to determine the level of lending, investment and service upon which they will be measured for purposes of compliance with CRA.

One of the questions posed by the OTS in the preamble to the proposal seeks input on whether the proposed changes to the ratings matrix will change the level of lending, investment and service in the community. ACB believes that it will not. In fact, we believe that communities will be served better because associations will tailor products and services to the particular community. Management of these institutions will

not have to seek out investments, just to show that they are making them. We have heard for years that community banks are required to make investments that benefit out of market communities because they are unable to find appropriate investments in their own communities. We continue to be aware of those situations. Further, in many cases, management of these institutions must make investments as part of programs or in instruments with which they are not familiar or that introduce an element of risk into the business mix from which they must allocate additional resources.

An example of the level of commitment that community banks have to meeting the needs of their communities is reflected in the results of an informal poll conducted by ACB. One area that ACB has monitored through an informal polling process for the past three years is the amount of time that ACB members devote to community service. In each of the last three years, ACB has done a poll of members soliciting information about the time commitment and the number of employees that each institution spends on community service. In the past year for example, 45 out of 130 community bank CEOs reported that they personally spent 11 to 20 hours per month on community service. Of the total, 43 CEOs reported that they spent six to 10 hours per month on community service. One of the most interesting results is that 99 of the 130 CEOs reported that their bank supports 11 or more nonprofit community organizations. This particular number has been consistently high over the past three years.

What is especially interesting is the size demographics of the 130 CEOs. Of the total, 76 are from institutions with under \$250 million in assets and only 16 are from institutions with over \$ 1 billion in assets. It appears from this informal survey that community banks of all sizes are active supporters of community activities, not because such activities are not necessary to satisfy CRA compliance requirements but because they are good business.

Community banks form partnerships with local nonprofit groups to work together to make the entire community a better place. It is in the best interests of every community bank to support local groups and to enter into partnerships with them. We strongly believe that the proposal will reinforce that process rather than diminish it. Giving the association the opportunity to determine whether lending to or investment in a partnership is the best use of the resources. Communities are best served if community banks can determine for themselves where their best efforts should be.

Community Development

ACB generally supports the revision of the definition of “community development” definition. ACB believes that a revised definition of community development that provides greater flexibility in granting CRA credit to activities in rural communities is necessary to ensuring that the credit needs of all segments of the community are met. We urge the OTS and the other agencies to develop specific guidance that will provide savings associations with information on just what the OTS will consider when examining activities in rural areas.

The OTS seeks input on whether the regulation should contain a definition of “rural.” We urge the agency to adopt a definition that is consistent with programs and activities with savings associations are involved. For example, the Federal Housing Finance Board and the Department of Housing and Urban Development each have programs in rural areas that are supported by savings associations. We suggest that the definition of rural be the same as what is already used.

In addition, we urge the OTS and the other agencies to develop a nonexclusive list that banks can look at and know that particular community development investments will satisfy the criteria. Several examples of activities or investments that we believe should be included in such a list are projects that are done through Habitat for Humanity and the Affordable Housing Program of the Federal Home Loan Bank System. These are just two examples, and we recognize that because of the local nature of much of the work that is being done, it is impossible to include all programs, but we believe that it is important to include some clarification.

We believe that such guidance can be in the form of additional questions and answers that can be changed over time in response to the evolving needs of communities. ACB also urges the OTS to develop examiner guidance that addresses these criteria.

Conclusion

We support the OTS in its efforts to amend the implementing regulation for CRA to ensure that it is flexible enough that savings associations providing meaningful support to all of their communities can receive credit for CRA purposes for these activities. We urge the OTS and the other federal banking agencies to look for ways to make the regulation flexible enough to provide an incentive to all insured depositories to seek ways to make meaningful change in their communities and not just satisfy a test or requirements that was developed without considering the special needs of individual communities. It is by doing the business that it knows best in a community that it knows best that insured depositories will find real relief from the unnecessary burdens of the current regulation.

ACB appreciates the opportunity to comment on this important matter. We stand ready to work with the OTS and the other agencies to develop flexible rules that are not overly burdensome. Please contact the undersigned at (202) 857-3121 or cbahin@acbankers.org should you have any questions.

Sincerely,



Charlotte M. Bahin
Senior Vice President, Regulatory Affairs