



## Consumer Federation of America

March 9, 20005

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal  
Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
RE: Docket No. R-1225

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
RE: RIN 3064-AC89

Office of the Comptroller of the Currency  
250 E. Street, NW  
Mail Stop 1-5  
Washington, DC 20219  
RE: Docket Number 05-04

Dear Sirs and Mesdames:

The Consumer Federation of America (CFA) writes to provide these comments on the joint proposal by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency that would make revisions to certain rules implementing the Community Reinvestment Act (“federal banking agencies”).

We commend the three federal banking agencies for this effort to reinvigorate a joint rulemaking approach to the Community Reinvestment Act (CRA) rule changes. Joint agency rulemaking has been the norm since CRA was first enacted and we believe it is far preferable for the financial regulatory agencies to operate in conjunction with one another for CRA purposes than to pursue the quixotic “go it alone” and arbitrary approach used by the OTS. Development of a common set of CRA rules fosters uniform performance standards, provides greater predictability lenders say they seek, deters efforts to game the system, and ultimately promotes increased public confidence in the CRA exam process.

CFA is a national non-profit association comprised of 300 pro-consumer groups established in 1968 to advance the consumer interest through research, education, and advocacy. See [consumerfed.org](http://consumerfed.org). Our organization and many of our national and local members work to promote and otherwise have a vital interest in public policies that help foster the flow of responsible credit and banking services to underserved communities. For almost three decades now CRA has served as a cornerstone for these efforts. Of course, CRA's effectiveness starts with the quality and thoroughness of the CRA performance exams, the standards for which are set out in the CRA rules. Accordingly, revisions to the CRA rules should be undertaken with great care and lead to improvements to CRA evaluations or enhancement of greater opportunities for the public to provide input.

We recognize that this joint proposal represents an improvement in a number of key respects over the proposal published last year by the FDIC and the recent rules adopted by the OTS. At its core, the joint proposal would establish a new performance standard for what are termed "intermediate small banks" (those depository institutions whose assets range between \$250 million to \$1 billion). However, unlike the earlier FDIC proposal and more recent OTS rule change the joint agency approach retains a "community development test" that still would count for 50% of these banks' CRA grade. Further, banks in this size category would still be expected to engage in all three community development activities -- community development lending, qualifying investments, and community development and retail banking services -- to achieve a satisfactory or higher CRA grade.

*Greater emphasis must be given to the retail banking services and branching policies that serve the needs of low-and moderate-income consumers and communities*

Notwithstanding the abovementioned improvements, CFA believes that important aspects of the proposal must be strengthened before a final rule should be adopted. Perhaps the most glaring weakness in the proposal is that it gives very short shrift to what we believe are essential components of the present performance standards: retail banking services and consideration of a bank's branching activities and policies. We urge that these important deficiencies be addressed in the final rule.

Present performance standards explicitly require consideration of a bank's record of providing "retail banking services" and branching policies as part of the "Service test" that presently accounts for 25% of a bank's CRA grade. Thus banking agency examiners consider the "availability and effectiveness" of a bank's systems for delivering retail banking services, specifically:

- The distribution of branches among low-, moderate-, and upper-income neighborhoods;
- The bank's record of opening and closing branches, particularly those serving low- and moderate-income neighborhoods (LMI) and individuals;
- The availability and effectiveness of alternative delivery systems serving LMI

- neighborhoods and individuals; and
- The range and degree of tailoring of services provided in low-, moderate-, middle, and upper-income neighborhoods.

The joint proposal would eliminate the separate service test that requires examiners to give due consideration to these factors. Instead, the preamble to the proposal indicates that “services for low- and moderate-income people would be taken into account in the proposed new community development test.” 70 Fed. Reg. 12152.

The preamble describes eligible services as those intended primarily to benefit low- and moderate-income people, “such as low-cost bank accounts and banking services such as low-cost remittance services.” Unfortunately, the proposal omits any explicit reference to branching considerations. Such considerations have been an integral part of CRA exams since regulations were first established in 1978. Failure to correct this omission is likely to take a regulatory incentive away from mid-sized banks covered by this test to continue to maintain branch facilities that serve low- and moderate-income consumers and underserved areas. It could even result in a wave of closings that would hamper the ability of many households to access mainstream banking services.

Although retail banking services is referenced briefly in the preamble, we note that the proposed revisions to the actual regulation also omit any explicit reference to these activities as one of the criteria to be considered under the community development test. See proposed revisions to Section 25.26. Nor are branching considerations referenced in this section.

CFA believes that it is vital that retail banking services and branching considerations be afforded comparable status to community development related activities under the proposed new test. Again, failure to make explicit reference to these factors is likely to result in a diminishment of the regulatory incentive that CRA provides for encouraging banks to provide retail banking services that encourages lower-income consumers to become part of the financial mainstream.

Research indicates that about 10 percent of all American families – including 25 percent of African American and Hispanics, a quarter of all families with incomes under \$20,000, and nearly half of all families moving from welfare to work -- have no bank accounts. Without banks accounts, families often pay exorbitant fees to check-cashing services and other “fringe bankers” to conduct basic daily financial transactions. Without savings accounts, families are often unable to accumulate savings for emergencies and therefore, to turn to expensive payday lenders that charge triple digit annual interest rates to address these needs. All too frequently this leads to defaults or borrowers falling into a “debt trap” as they repeatedly “roll over” the loan depleting their wealth and destabilizing their financial situation. Thus a family’s banking status also has profound implications for their long-term self-sufficiency and access to a broader set of financial services. Low-income people with bank accounts are more than twice as likely as their underbanked counterparts to hold savings or have a home mortgage, and are six times as likely to own a credit card.

For these reasons, CFA believes it is essential insured depository institutions regardless of their asset size be encouraged to affirmatively reach out to provide banking services that help to move consumers into the financial mainstream. Failure for the new community development test to include these considerations would open the door wider for fringe bankers to move into these markets and thus further depleting wealth from many modest income consumers.

CFA urges, therefore, that retail banking services and branching activities both be explicitly referenced not only in the preamble but also be spelled out in the new rules governing the proposed community development test. We would go further still. To ensure that these factors are not overshadowed in the new test, CFA encourages that “community development test” be renamed as the “community development and consumer banking services test.” Broadening the term for this test would help offset the tendency to overemphasize community development activities to the exclusion of retail banking services and branching considerations.

*The new community development test should not result in reduced commitments by banks*

The single community development test, in our view, is also likely to pose other challenges to enforcement. For example, CFA is concerned that merging distinct activities -- community lending, qualified investments, and services -- into a single test could result in banks reducing the total resources currently devoted to all of these activities. Many commenters expressed similar concerns in opposing the elimination of the investment and service tests as proposed last year by the FDIC and recently adopted by the OTS. Indeed, even the preamble appears to acknowledge this possibility. Thus to mitigate the potential drop-off effects resulting from a single community development test CFA believes that the revised regulations must make clear that they will weigh future performance levels against prior levels of performance for the purposes of applying this test. We also encourage the regulators to make greater use of the CRA Performance Context to determine the appropriate levels of resources banks should devote to eligible activities under the new test.

*Lowering CRA grades for practices that violate other federal and state consumer protections laws*

The joint proposal also would revise the CRA regulations to permit a bank’s CRA grade to be adversely affected should there be evidence that the institution engaged in discrimination or other illegal credit practices. Such downgrading could result regardless of whether these practices occurred within or without of a bank’s assessment area(s) or occurred through an affiliate of a bank. The proposal also would be revised to include an illustrative list of such practices. CFA supports this proposal. We also urge that the final rule encompass not only federal consumer law but also state consumer protection laws as well.

*Other provisions*

CFA opposes reductions in publicly available data concerning community development, small business, and small farm lending.

CFA urges that the proposed definition of eligible community development in rural areas only be applied to banks with assets between \$250 million and \$1 billion.

We thank the three federal banking agencies for this opportunity to comment. If you have any further questions about this comment, please feel free to contact me at 202-387-6121.

Respectfully submitted,

Allen J. Fishbein  
Director  
Housing and Credit Policy