May 10, 2005

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
E-mail: regs.comments@federalreserve.gov
RE: Docket No. R-1225

Mr. Robert E. Feldman
Executive Secretary Attention: Comments
Federal Deposit Insurance Corporation
550 17th St. NW 20429
Washington, DC
E-mail: Comments@FDIC.gov
RE: RIN 3064-AC89

Office of the Comptroller of the Currency
250 E St. SW, Mail Stop 1-5
Washington, DC 20219
E-mail: regs.comments@occ.treas.gov
RE: Docket Number 05-04

Thank you for the opportunity to comment on the proposed changes to the Community Reinvestment Act (CRA). I am writing on behalf of Coastal Enterprises, Inc. (CEI), a rural, nonprofit community development corporation and community development financial institution (CDC/CDFI). For over 27 years CEI has sought out ways to improve access to capital for marginalized populations to provide affordable housing and access to decent employment for people and places left out of the economic mainstream, and to align private capital markets with social investments benefiting communities, residents and the environment.

The actions you take with respect to some of the changes and modifications you propose – especially those dealing with reporting requirements of banks with assets of between $250 million and $1 billion – will have a major impact on the future effectiveness of what has proved an extremely important tool for community development in rural places like Maine, and also other rural regions and urban neighborhoods in the U.S. Please consider the following comments, concerns and recommendations on our part – and I believe reflective of similar concerns throughout the U.S. – and also attachments for more specific documentation, including points raised by our national trade association, that provides important research and advocacy on CRA issues, the 600-member National Coalition for Community Investment based in Washington, DC.

We are especially concerned about proposed rules and/or modifications to the CRA reporting requirements that affect mid-size banks, since so many of them are active in rural regions like Maine, and are essential to the life-blood and aspirations of people and communities left out of the economic mainstream. The banking community in Maine has been crucial to CEI's growth and impact on businesses and low-income people and communities. We appreciate the partnerships with them, and believe CRA has served its purpose well in providing a guiding framework to community investing.

Over the years since 1977, and especially 1995 when significant revisions were made, the CRA has greatly increased the flow of capital with literally hundreds of billions to low-income people and communities left out of the economic mainstream. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low and moderate-income communities, both urban and rural**.** We want to continue and even expand that record, especially in a time when the present Congress is dealing with huge deficits and planning on outright reductions of many of the affordable housing and economic development programs and agencies important to Maine and the rest of the nation.

We urge your utmost consideration in the proposed CRA examination tests to preserve and enhance the rules by which over 1,500 banks in the U.S. with assets between $250 million and $1 billion will report under the three-part test of community development loans, investments or services. Because of these tests, banks have often partnered with entities like CEI opening up new markets, business and customer opportunities in low-income areas. In the process of our growth and impact, community banks with assets under $1 billion, along with larger, national banks, have been essential to socially-directed investing.[1]

We are pleased the Federal Deposition Insurance Corporation has joined with the Office of the Comptroller of the Currency and Federal Reserve Bank to drop the proposal – as we urged in our last comment letter – to allow mid-size banks with assets between $250 million to $1 billion to offer either community development loans, investments, or services as part of their CRA examination. All three are essential, as has been the requirement under traditional CRA reporting. This three-part test has been vitally important to, and has had a major impact on, the flow of capital to underserved people and regions throughout rural and urban America.

However, serious issues remain that will likely lead to less investment if some of the contemplated changes stick. We believe it is critical to change your current proposal in significant ways to prevent reductions in lending and investing in our communities**.** One suggestion, for example, would be to measure past levels of community development financing with future levels to track significant decreases that would result in a less favorable rating. In CEI's case, we have gained invaluable access to bank funds to support a wide array of lending and investing in Maine's communities. This must continue if the work of our partnership is to grow.

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[1] With currently nearly $250 million in capital under management, including the $129 million allocation from the U.S. Treasury's New Markets Tax Credit program, CEI has loaned, leveraged and invested close to $1 billion to 1,500 small, medium and microenterprises, value-added natural resources farms, fish and forest industries, community facilities such as child care centers, and affordable housing. We have financed 1,500 ventures in primarily a subordinated debt relation to senior bank lenders; created or sustained 16,000 jobs; developed some 998 units of affordable rental, supported and homeownership housing; created child care slots for over 4,500 Mainers; and have provided business counseling to 20,000 fledgling enterprises, many of whom are women in business, and eventually become bank customers. In addition, our venture capital and new markets tax credit (NMTC) programs serve parts of Northern New England and upstate New York. We have a substantial housing development program that provides affordable housing for residents of mid-coast Maine.

Let me just say a few words about why CRA has been and ought to remain a major regulatory stimulus to spur private sector lending and investment to help build healthy communities. With 1.2 million in population, 33,000 square miles, Maine is among the country's most rural states. According to NCRC analysis based on Federal Reserve Board data for the year 2003, there are 20 banks of 32 or 62.5 percent of establishments that fall into the mid-size asset category. These banks and their branches are essential to serving the credit needs of a dispersed population. Ensuring CRA exam tests take into account branch services, one can see how important a comprehensive review process should be. What is even more telling about Maine's mid-sized banks is that they account for a whopping 74 percent of deposits! In the rural regions of Maine alone (not including the few metropolitan areas of the state like Portland, the largest city, with about 65,000), they made together over 6,800 loans accounting for 37 percent of the small business loans in the same year, and 831 farm loans accounting for 67 percent, excluding credit card transactions.

Our state has been buffeted by plant closings and outsourcing that have resulted in the loss of tens of thousands of well-paid manufacturing jobs and job opportunities for young people. Maine is now the oldest state in the country. With an average household income of just $36,000 – 10 percent less the national average – close to 40 percent of our households are within 200 percent of the federal standards of poverty. Families in Maine work hard to make ends meet.

There is a sense of great urgency to support new enterprise development and create a place where Maine's youth choose to stay, raise a family and make a contribution. Good jobs, affordable housing, and important community facilities and services all are essential for sustainable and healthy communities. Maine, like many other rural regions of the U.S., is struggling at all levels to create the essential infrastructure – high quality educational system and affordable health services so that its traditional natural resource industries, as well as new economic opportunities in information and other technologies, can thrive and serve its people well. Maine's banking system is also a crucial part of this infrastructure.

We believe CEI's partnership with banks is a model of community investing, and that we are having an impact. We have created or sustained some 16,000 jobs, provided business counseling for 20,000 fledgling entrepreneurs, and developed over 900 unites of affordable homeowership, rental and supported housing. Banks, the mid-sized ones a valued component of that, have been part of the partnership solution. The CRA, whether here or in other parts of the United States, has been the regulatory framework to help create such a partnership with us and other community development entities.

Historically, as you are aware, CRA originated out of the practice of "redlining" in Chicago and other urban areas, the intentional practice of selecting neighborhoods where loans would be limited, or not made at all. These tended to be poor, black communities. It came out of a period of U.S. history of racial strife and polarization. There has been considerable progress in leveling the playing field and extending economic opportunities to all Americans. Since then Maine community banking institutions have stepped up and stepped into the business of community investing in a very positive way. Maine has a strong tradition in support of much progressive federal legislation, including civil rights, CRA, clean water and air. The Mainer generally wants everyone to have a "fair chance" at making a living. The Mainer also generally tends not to "fix something if it ain't broke." While challenges and improvements are needed in all respects, we believe that CRA has served us well in Maine. CEI has had an enormously positive relationship with Maine banks of all sizes due, in no small part, to their responsiveness perhaps beyond CRA rules to score points.

On that note, we believe the banking community in Maine wants to deliver capital to worthy affordable housing and business ventures in their market regions, and lead their institutions responsibly as citizens of the communities they serve. Leadership and the signals sent at the federal level on what is in the public interest for the widest number of people – and with respect to minority positions – are at the heart of our democracy. At CEI, we have integrated many of these issues to find the balance between good citizenship as a voluntary act, and a regulatory environment conducive to the goodness we seek. Several bankers serve on CEI's board of directors, from banks such as Bath Savings, KeyBank, Bank of America, and Banknorth. Bankers also serve on CEI's subsidiary boards. As we have reported in the past, seven mid-sized banks are invested in our community development venture capital funds. We value the capital and skills they bring to the table, and the public trust and mission they are representing in creating opportunities for people and places left out of the economic mainstream. Our partnership – and the vision of CRA that underlies it – represents not just a dialogue about doing good; we measure that good by real investments for people and communities in need of the strength such a partnership can bring to their social and economic aspirations.

Thank you for considering our comments, and attachments. Please let me know if I can be of further assistance.

Sincerely,

Ronald L. Phillips
President

Copies to:
CEI board and subsidiary boards
Maine Bankers Association and Maine Association of Community Bankers
Maine Governor John Baldacci
Maine Office of Consumer Credit
Maine's federal delegation: Senator Olympia Snowe; Senator Susan Collins; Congressman Tom Allen, Congressman Michael Michaud

Attachment: CEI specific comments on proposed CRA exam, May 10, 2005

While the new proposal offers some substantive improvements on previous proposals put forward by each of the regulatory agencies over the last year, Coastal Enterprises, Inc. believes that the newly proposed CRA regulations can be further improved to more constructively meet the goal of expanding credit and financial services to all low and moderate-income areas. **In particular, we are concerned with the loss of a required investment test for a significant number of financial institutions regulated by your agencies.** Following are some ideas on ways to improve the current proposal.

Suggested Improvements to the Proposed Regulations
CEI believes the community development test for "intermediate small banks" and the elimination of lending reporting for "intermediate small banks" could be more constructively crafted to ensure that progress of community development is not adversely impacted in the service areas of "intermediate small banks." **The loss of a required investment test and the small business reporting data is of particular concern to CEI.**

(1) Continuation of required investment test for mid-sized banks
CEI's success has depended in part on its ability to partner with banks in targeting capital to low-income communities through investments that gain credit under the current investment test structure. The Community Reinvestment Act has been important in helping leverage private capital for the community development field and low-income communities. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low and moderate-income communities.

There are 20 banks in Maine with assets between $250 and $1 billion that would be affected under the proposal by the three regulatory agencies. **Under the proposed changes to the CRA exam, these 20 banks would not be held accountable to investing in low and moderate-income communities. This would exempt over $10 billion of bank assets from the investment test.**

We believe the regulatory function of CRA has opened up many opportunities and partnerships and has had positive rather than negative effects for both small and large banks. **We are very concerned that throughout the country the motivation for some of these banks to invest in community groups will be reduced**.

(2) Loan Reporting Requirements
CEI believes that the requirement that "intermediate small banks" report originations of purchases of **small business, farm and community development loans is critically important and should not be eliminated**. These data determine best practices of community development activities in financial institutions' service areas. Moreover, these data are important for effective policy decisions. Reporting community development lending by "intermediate small banks" does not appear to be an added regulatory burden, considering such activity is already included under the proposed community development test. There is no evidence cited that indicates the extent of the regulatory burden to banks.

In the past, CEI has **used these data to establish market need for CEI funds** in particularly distressed areas. We have also worked with federal government agencies to use this data to look at markets served by banks for policy initiatives. For example, we are working with the Small Business Administration to understand microenterprise lending and the market need for products such as the SBA Microloan program. We have had similar data needs to look at particular census tracts to establish market need for a particular product, such as the New Markets Tax Credit; however, we have been unable to use the data because it is not detailed enough. We would **like to see a proposal to increase specificity around data collection**.

For instance, having access to data on the gender of the borrower would enable CEI to better establish where banks are serving women appropriately. Lending data provided at the census tract level would allow CEI to use the data to look at different labor market areas and assess the need for our range of products. Given such data is available for home mortgages, we feel it appropriate that an increased level of specificity be introduced into the lending data.

We are very worried about the potential for losing access to these important data set for Maine. Our state is in an increasingly data poor environment as our state banking regulators currently have discontinued collection of both mortgage and commercial lending activity for Maine. Data from the federal regulators are the only **comprehensive data currently available**.

In fact, Federal Reserve Board Chairman Alan Greenspan recently noted, *Because it is critical that low and moderate-income lending be, and be perceived as, an extension of regular business practice, we have been building a substantial database on low-income credit experience and business opportunities. This information has been critical to successes in low-income lending. But information collection and analysis must reach further.*[2] We believe that Chairman Greenspan should support this effort to provide more complete information on small business, farm and community development bank lending than is currently available so that we are able to reach further in market analysis.

(3) Community Development Test
In the event the newly proposed exam structure is adopted, the community development test should be more well-defined in a number of key areas. As stated in the proposed regulations, *In providing this flexibility for intermediate small banks, it is not the intention of the federal banking agencies to permit a bank to simply ignore one or more categories of community development.* It is critical that a new community development test be designed so all three activities are continued in a manner which is transparent and measurable. CEI supports the following improvements to the proposed community development test:

1. **Holistic evaluation**: To receive a "satisfactory" score on the community development test, an "intermediate small bank" must engage in all three components of the community development test. A passing score will not be received if one or more activities in the community development test are not undertaken.

2. **Evaluation based on asset size**: The compliance of "Intermediate small banks" with the community development test should be evaluated based on a combination of measuring need and a baseline comparison to prior levels of a financial institution's activity for each of the three areas in the community development test. Increases in each of the three activity areas are to be expected according to a financial institution's growth in asset size from the previous examination period to the current examination period, unless a demonstrated decline in need in a financial institution's service area can be demonstrated. For financial institutions with unsatisfactory performances on any of the required service, lending, or investment tests prior to the new community development test, the increase from baseline activities will be held to a level greater than growth in asset size, sufficient to demonstrate the need of the service area has been met.

3. **Innovation:** In addition to the community development test, CRA credit may be awarded for innovative CRA activities such as creating a type of loan, investment, or service where no such practice existed previously that serve a Low-Income Community need.

[2] Chairman Greenspan's remarks to the National Community Reinvestment Coalition (3/17/05).

4. **Justification of actions**: If an "intermediate small bank" claims that it is unable to meet standards under the investment, services or lending tests, it should be required to provide justification. For example, if a financial institution does not meet minimum requirements under the investment test, the bank should be required to indicate which investment opportunities were considered and why it was unable to invest in them. The information provided by this requirement detailing the infeasibility of certain opportunities to meet the community development test will increase a database of knowledge vital to understanding the limitations and barriers to expanding financial services and access to capital to all communities—a key to the success of future community development activities. This may, in fact, be something that should be applied to large banks as well.

5. **Predatory lending practices:** We want to make sure that "intermediate small banks" help in developing alternative non-predatory products for this market, and are proactive in financial education and partnering with community groups to ensure that predatory lending doesn't strip away assets from communities. We would like to see CRA credit awarded for banks that have proactive programs and policies in dealing with these problems. Possibly this is structured as an additional section under the community development test.

(4) Rural Definition of Low-Income
CEI has examined each of the proposals put forward by the Federal Reserve: 90% of area median income; 100% of area median income; 80% of state median income; and the CDFI Fund definition. We feel that the only one of these proposals that is inappropriate is the 100% of area median income. The one caveat to be offered concerning the CDFI Fund guidelines is that they are less stable than those based only on Census data. Thus, one scenario that may be constructive is offering CRA credit for activity in any of the three areas: (1) 90% area median income; (2) 80% of state median income; (3) CDFI Fund definition.

(5) Anti-Predatory Language
CEI welcomes the explicit inclusion of discriminatory and predatory credit practices in determining a financial institution's CRA rating. Predatory lending practices such as payday lending, tax refund anticipation loans, and predatory mortgage lending are fast becoming the biggest financial problem in communities around the country. Maine is a new market for these products. While violations of discriminatory and anti-predatory credit laws were previously included in CRA guidelines, this explicit inclusion of the guidelines in the CRA regulations will further emphasize the adverse impact a financial institution's discriminatory and predatory credit practices will have on its CRA rating. We would like to make sure that this rating includes secondary market activity.

(6) Introduction of the Intermediate Small Bank Category
The creation of a new category of an "intermediate small bank" (banks with assets between $250 million and $1 billion) appears to be the trend for all four regulators charged with administering CRA regulations. CEI accepts the creation of this new category; however, we oppose tying the definition to inflation increases of the Consumer Price Index (CPI). The CPI will, in time, significantly decrease the number of financial institutions subject to the large bank required three-part CRA examination.

CEI hopes further careful consideration will be given to the proposed regulations by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to ensure the future effectiveness of the Community Reinvestment Act's objective of expanding access to capital and financial services to all communities throughout the United States.

NCRC Memo on the New CRA Proposal by FDIC, OCC, FRB

Overview

On February 22, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) proposed a new CRA rule for mid-size banks with assets between $250 million to $1 billion. The Federal Reserve Board (FRB) also approved the proposal on February 25. The comment period of 60 days will commence with publication in the Federal Register and will end in late April or early May.

There is no question that the agencies are proposing a new rule because of the overwhelming opposition to the fall FDIC proposal. In the fall, the FDIC received 6,000 comments in opposition out of a total of 11,500 comments received. It is also true that this proposal is an improvement from the fall proposal. In the current political environment, this is a significant accomplishment by NCRC and our member organizations. Yet, although the new proposal is an improvement, the proposal falls short in some key areas, and we remain concerned.

Analysis of Proposed Rule

In the fall, the FDIC proposed a "wink and nod" exam for mid-size banks that would consist of a lending test and a community development criterion. The community development criterion would have allowed a bank to engage in community development lending, community development investments, or community development services. Also, the FDIC proposal would have allowed all FDIC-supervised banks to engage in community development activities in all parts of rural counties, not just low and moderate-income census tracts.

The late February proposal by the FDIC, OCC, and FRB eliminated the worst aspects of the fall proposal, but a number of serious issues remain. Firstly, the "community development criterion" is replaced by a community development test. The community development test will require community development loans, community development investments, and community development services. Hence, the exam now requires all three community development activities, not just one, as per the fall proposal.

The community development test will count for half of the grade and the lending test will count for the other half of the grade. A mid-size bank must score at least a satisfactory on both the lending test and the community development test in order to receive an overall passing rating of satisfactory. In contrast to the fall proposal, community development activities are much more important as they are now considered by a test that receives a separate rating.

For rural counties, community development activities can be directed towards "underserved" areas. The request for public comment will ask the general public how "underserved" is to be defined. The proposal offers a number of possibilities including using statewide median income instead of non-metropolitan median income to use in determining which census tracts are low and moderate-income. NCRC had supported this procedure instead of the fall proposal's suggestion that community development could be targeted to any census tract(s) in rural counties.

The new proposal also states that a bank's rating is adversely affected by discriminatory and illegal credit practices that include violations of the Equal Credit Opportunity Act, the Fair Housing Act, the Home Ownership and Equity Protection Act, Section 5 of the FTC Act, Section 8 of the Real Estate Settlement Procedures Act, and violations of Truth in Lending Act provisions regarding right of rescission. The extent of the adverse effect on ratings depends on the extent of the violation of these statutes. Currently, these standards are in guidance; the proposal will move this to regulation. This is a modest, but important step.

There are a number of issues regarding the new exam for mid-size banks ("intermediate small bank" per the jargon of the regulators):

1. *Branches no longer explicit part of exam.* The retail portion of the service test is eliminated. The CRA exam for mid-size banks would no longer scrutinize the number and percent of branches in low and moderate-income communities as a separate criterion. With the explosion in payday lending, banks must be held explicitly accountable for building and maintaining branches in low and moderate-income communities.

2. *Bank services will be looked at under new exam.* Bank services "intended to primarily benefit low and moderate-income people" such as low-cost bank accounts and low-cost remittances will be evaluated under the new community development test for mid-size banks. But the agencies probably will not measure how many of these services actually reach low and moderate-income customers, except occasionally as happens now. During previous comment periods, NCRC has called for mandatory collection of data on deposit accounts and other bank products by income level of borrower and census tract; this data collection would improve the rigor and consistency of the service exam.

3. *Reductions in publicly available data.* The mid-size banks would no longer report CRA small business or farm lending data or community development lending data. Without publicly available data, we will not know if these lenders are meeting the credit needs of small businesses, farmers, or the need for affordable housing and community development lending.

4. *Lower levels of investment.* The elimination of the separate investment test will probably result in lower dollar levels of investment. Banks are likely to make more investments under the current investment test because their investment performance is more visible under a separate test than under a community development test, which looks at community development lending and services as well as investments. If the regulatory agencies committed to comparing past levels of community development lending and investing with future levels under the new exams, then it is unlikely that banks could get away with significantly decreasing their levels of community development financing.

5. *Inflation factor.* The agencies will adjust the asset threshold for mid-size banks to take inflation into account on an annual basis. For example, the asset range is $250 million to $1 billion for the current year, but next year the floor of $250 million will be adjusted upward to reflect inflation as will the ceiling of $1 billion. Another problem is that the consideration of holding companies will be eliminated by the proposal. Currently, if a small bank is owned by a holding company of more than $1 billion in assets, it is subject to the more comprehensive large bank exam because holding companies can provide financial resources to the small bank for complying with CRA.

6. *The rating scheme change.* The mid-size banks currently can get low and high-satisfactory as well as outstanding, needs to improve or substantial non-compliance on their lending, investment, and service tests. These five ratings provide for a more accurate depiction of performance than the four ratings found on the current small bank exam of outstanding, satisfactory, needs to improve, and substantial non-compliance. The new exam for mid-size banks will now have four ratings.

If you have any questions, please contact us at (202) 628-8866. Also, visit http://www.ncrc.org for sample letters regarding the CRA proposal and instructions for sending letters to the regulatory agencies.