May 10, 2005

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Attention: RIN 3064-AC89

Office of the Comptroller of the Currency
250 E Street S.W., Mail Stop 1-5
Washington, D.C. 20219

Attention: Docket No. 05-04, RIN 1557-AB98

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington D.C. 20551

Attention: Regulation BB; Docket No. R-1225

Re: Community Reinvestment Act Regulations
70 FR 12148(March 11, 2005)

Dear Sir or Madam:

America's Community Bankers ("ACB")[1] welcomes the opportunity to comment on the joint proposal issued by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, collectively the "agencies" that would amend the regulation that implements the Community Reinvestment Act ("CRA").[2] The proposal would amend the regulation in three respects. First, the definition of a small institution would be revised to include those institutions with up to $1 billion in assets regardless of holding company affiliation. Second, the proposal would add a community development test to the evaluation method for small banks with assets greater than $250 million up to $1 billion in assets. Finally, the proposal would expand the definition of community development to include certain community development activities, including affordable housing, in underserved rural areas and designated disaster areas.

ACB Position

Regulatory relief is one of ACB's highest priorities. Amending the definition of what is a small institution provides meaningful regulatory relief for those institutions with over $250 million in assets but with less than $1 billion in assets. We do not believe that it is necessary to add a community development test to the examination process for these institutions but the test that the agencies has proposed is a better alternative than the current three-pronged lending, investment and service tests. ACB strongly recommends that the agencies look at the revisions made by the Office of Thrift Supervision as an example of regulatory relief.

ACB strongly supports this proposal. We have had a policy position for a number of years calling for raising the threshold for what is considered to be a small bank to those institutions with assets up to $1 billion. Further, we support the proposal to add a factor that would adjust the asset size for mall banks based on changes to the Consumer Price Index.

ACB strongly believes that using the same three-prong lending, investment and service examination process to measure the compliance of a bank with $300 million in assets and a bank with $300 billion in assets does not make any sense. Small banks should be able to use the valuable and scarce human and financial resources in truly understanding and meeting the needs of their communities rather than trying to prove compliance with the broader examination requirements.

We also support the addition of the community development test for those small institutions between $250 million and $1 billion in assets ACB believes that the agencies' proposal represents a good compromise for examining intermediate small banks by looking at how they serve their communities by providing financing for infrastructure, economic development and other community development activities. We have long urged a review of the investment test especially as it is applied to small- to medium-sized institutions.

Anecdotally, we have heard any number of times that institutions in one geographic area are required to purchase investments, including mortgage backed securities, backed by mortgages that are not on properties in the institution's assessment area or even the same geographic area in order to satisfy the investment test. We urge the agencies to continue to work with the banking industry and the community groups to develop guidance establishing reasonable criteria for this test.
ACB strongly urges the agencies to work with one another and with the Office of Thrift Supervision to continue the review of the implementing CRA regulation and the

accompanying guidance in the form of questions and answers and the examiner guidance. We believe that to the extent possible the agencies should adopt a uniform regulation with which all insured depositories will have to comply. We commend the agencies for the work they have done to date reviewing the current regulation, which is now ten years old. We continue to believe that given the rapid evolution of the industry that the agencies must constantly review the guidance and update it as necessary.

General

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. These financial needs involve all aspects of family life. It is no longer possible to limit service to these customers to providing home mortgage and consumer credit and basic deposit products. 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.

ACB believes that the performance context of a community bank's compliance with its CRA obligations is an important starting place for the evaluation. 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. Another frequent concern is that peer information is hard to obtain because many community banks do not know have true peers in the communities they serve. We urge the agencies to continue to look for ways to use the performance context in the examination process so that each institution can be given the credit it deserves for the work it does in its own community.

We urge the agencies continually to evaluate the information and how to measure what a community bank is doing vis a vis what is needed. What a community bank does in the context of all of the factors is an important measure of what is possible. A community bank may do more to further the goal of meeting the credit needs of the community by doing something other than financing home mortgage loans.

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 spot 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. This number is very enlightening and looked at in the context of one of the criticisms that opponents of the proposal are making it is even more interesting.

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 with less than $250 million in assets are active supporters of a number of community nonprofit organizations and we know that the proposal will not change the level of community involvement by community bankers.

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.

Small Bank Definition

While thousands of community banks continue to be smaller than the $250 million threshold, there are many that are between $250 million and $1 billion in assets. It is incomprehensible that those institutions have to be judged on the same basis as the multi-billion dollar banks. This arbitrary threshold makes no sense. The resources available to these institutions are vastly different, the philosophy of the institution and management, the operating strategy, and business plan are all different. Additionally, smaller "large" institutions are not able to engage in certain activities or offer products on the same terms and conditions as the large institutions without risking criticism from safety and soundness examiners. The stage must be set for a realistic standard that will promote and encourage community lending.

Community banks cannot exist without serving the credit needs of their communities. Lending to families and small businesses is the purpose of these institutions. One of the stated goals of the revisions of the regulation in the mid 1990's was to reduce the paperwork associated with measuring CRA compliance while rewarding performance. For small institutions, the streamlined examination procedures represent a reduction in paperwork and therefore an addition to the resources that can be spent working with customers and developing products that really do meet the needs of the community.

We believe that the proposal would provide important regulatory relief to many community banks. Unnecessary regulatory burden drains resources that community banks would otherwise devote to serving their customers and their communities.

Significantly, the proposed revision would not exempt any institutions from complying with the CRA. Rather, the proposal would expand the number of institutions that would be evaluated for CRA compliance under a streamlined examination process. Streamlining an exam in no way diminishes an institution's commitment to its communities. We are pleased that the proposal acknowledges that community banks should not be required to expend a disproportionate percentage of their resources to demonstrate that they serve their local communities. The principle underlying CRA is what community banking is all about – investing resources to benefit and serve the entire community. Community banks do not need a complicated examination process to show they are in compliance with the law.

Community banks across the country are successful because the business models focus on meeting the financial needs of communities. However, growing layers of red tape are consuming important resources that community banks could otherwise direct toward serving their customers and communities. The burden of new regulatory requirements mandated by the USA Patriot Act, the Gramm-Leach-Bliley Act, the Sarbanes-Oxley Act, and the Home Mortgage Disclosure Act, to name a few, weighs heavily on all financial institutions. Community banks have been particularly impacted by these regulations. We believe that defining a "small bank" as an institution with less than $1 billion in assets would be an important step in alleviating unnecessary regulatory burden.

Community Development Test

ACB believes that the addition of the community development test for those institutions between $250 and $1 billion in assets represents a good compromise. We have long supported a more flexible interpretation of meeting the needs of the community. We strongly believe that community banks meet the needs of their communities everyday by engaging in activities that are far beyond the financing of mortgages or the provision of consumer or deposit products. We urge the agencies to include participation in consortia and other types of partnerships in the examination criteria.

It is through consortia and other partnerships that community banks are able to leverage their limited resources to provide meaningful services to their communities. We do not believe that the addition of the community development test will diminish any way the investment and partnership community banks have with local nonprofit groups.

ACB members are committed to making credit available to the communities in which they operate. 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 community bank the ability to determine where to spend the scarce resources is appropriate.

One of the issues that arises in the context of the development of new examination tests or criteria for these intermediate small institutions is whether the proposed addition of a community development test 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 community banks will be able to tailor products and services to the particular community, within the definition of community development. 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 for which they must allocate additional resources.

While we support the addition of the community development test, we urge the agencies to develop specific guidance that will provide community banks with information on what they will consider when examining the institution. ACB urges flexibility because of the differences in communities but at the same time, we recognize that community banks need to know what the measure will be so that they can make adjustments if necessary.

For example, we urge the agencies to develop a nonexclusive list that banks can look at and know that particular community development investments will satisfy the examination requirements. 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 agencies to develop examiner guidance that addresses the community development examination procedures.

ACB also supports the amendment to the definition of community development that provides that community development includes the provision of services and affordable housing for individuals in rural areas. Again, while we support this important change, we are concerned about the interpretation. We believe that community banks in rural communities will not change the way that they serve their communities. Those banks would not exist if they did not serve all elements of the community.

The agencies seek input on an appropriate definition of “rural.” We urge the agencies to look to programs and initiatives that serve rural communities and adopt a definition that will be commonly understood. The Department of Housing and Urban Development and the Federal Home Loan Banks that make up the Federal Home Loan Bank System each have programs that are targeted to meet the housing and economic needs of certain rural communities. We urge the agencies to adopt a definition that can be understood in the context of the programs in which a community bank in a rural area might be involved.

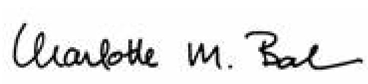
Conclusion

We appreciate the agencies continued work on revising the regulation that implements CRA. We reiterate that community banks do not invest in their communities simply to comply with federal law. Rather, the proposal recognizes that community banks invest in their communities because it is good business. We urge the agencies to continue working with on another and the Office of Thrift Supervision on all aspects of this rule and the implementing guidance.

We stand ready to work with all of the agencies to develop workable guidance that meets the important goals of CRA but is not so burdensome that community banks are unable to comply.

Thank you for the opportunity to comment on this very important matter. Please do not hesitate to contact the undersigned at (202) 857-3121 or cbahin@acbankers.org should you have any questions about this letter.

Sincerely,



Charlotte M. Bahin
Senior Vice President
Regulatory Affairs

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[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] 70 Fed. Reg. 12148 (March 11, 2005)