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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
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Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
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comments@fdic.gov

Re: Proposed Revisions to the Community Reinvestment Act Regulations
OCC: 12 CFR Part 25; Docket No. 05-04; RIN 1557-AB98
FRB: 12 CFR Part 228; Regulation BB; Docket No. R-1225
FDIC: 12 CFR Part 345; RIN 3064-AC89

Dear Sir or Madam:

JPMorgan Chase Bank, N.A. and its bank affiliates (collectively, "JPMorgan Chase") appreciate the opportunity to comment upon the Joint Notice of Proposed Rulemaking (the "Proposal") regarding proposed changes to the Community Reinvestment Act ("CRA") regulation (the "Regulation") of the above-named agencies (the "Agencies"). JPMorgan Chase commends the Agencies for revisiting the Regulation and encourages the Agencies to provide

increased flexibility in fulfilling their CRA responsibilities to all banks, whether large retail, intermediate small, or small. Increased flexibility will benefit not only banks, but communities as well, because banks will be able to focus their resources, within certain parameters, on the CRA activities that they do best.

JPMorgan Chase also strongly urges the four bank regulatory agencies to promulgate regulations implementing banking laws that are uniform and consistent across all banking charters. The banking industry has come to expect uniform regulations, particularly CRA regulations, which provide an even playing field across banking charters and which make the industry stronger.

A. The Proposal for Intermediate Small Banks Should be Expanded, with Modification, to Large Retail Banks

JPMorgan Chase strongly supports the Proposal's goal of providing increased flexibility to intermediate small banks (banks with an asset size between \$250 million and \$1 billion) in fulfilling their CRA responsibilities by providing a simplified lending test and a flexible new community development test for them. The Proposal in large part is consistent with suggestions that JPMorgan Chase has made in prior comment letters. JPMorgan Chase believes that the Proposal is so beneficial that it strongly recommends that the Agencies propose a similar, albeit slightly modified, proposal for large retail banks. JPMorgan Chase believes that a two-part test as described below will give large retail banks the flexibility they need to manage their CRA responsibilities while at the same time more efficiently serve community needs without diminishing the CRA impact on their communities.

1. Reorganizing the CRA Structure for Large Retail Banks from Three Tests to Two Tests Will Provide Increased Flexibility to Banks without Diminishing the Effect on Communities

JPMorgan Chase recommends that the Regulation for large retail banks be divided into two tests: Retail Banking and Community Development. A reorganized Regulation would allow for a more holistic approach to the distinct retail banking and community development needs of local communities.

a. The New Retail Banking Test

In a two-part CRA test, the Retail Banking Test would combine mortgage, small business and optional consumer lending with retail banking products and services. Retail banking services are basically distribution networks, such as branches and ATMs. Combining retail

lending with retail banking distribution systems would provide a better alignment between the Regulation and the core businesses of banks.

The benefit of combining retail lending with retail distribution is that the CRA evaluation could better balance the quantitative and qualitative measures within one test rather than across multiple tests. For example, a bank may be only average in mortgage lending because of the very competitive market in which it operates. It may offer, however, some very innovative, niche mortgage products for low- and moderate-income borrowers ("LMI") through an alternative banking delivery system. In the current evaluation process, the innovative mortgage products are assessed as part of the Lending Test and the alternative delivery systems are assessed as part of the Services Test. By separately assessing and rating retail lending and retail distribution, the evaluation process does not align with the way banks manage their businesses. As a result, the innovative mortgage initiative may not gain sufficient recognition as a result of being split between the Lending and Service Tests. The combination of the two under one test, the Retail Banking Test, achieves a more holistic result.

b. The New Community Development Test

JPMorgan Chase recommends that community development lending be moved into the new Community Development Test that would be exactly the same as the current Community Development Test for wholesale and limited purpose banks. A separate Community Development Test would evaluate community development lending, community development investments and community development services. These three elements would be examined in concert and allow for a bank to balance its response to local community needs based on its capacity and expertise for meeting those needs. A restructured rule that has a Community Development Test would ensure more flexibility to balance qualitative and quantitative measures and will make CRA more sustainable for the benefit of both banks and LMI communities.

2. The Weighting of Each Test Should be Flexible

In recognition of the fact that every bank has a unique business strategy, assessment area, set of resources and corporate culture, JPMorgan Chase recommends that the Regulation allow large retail banks to determine the amount of weight for each of the two tests, within their performance context and within certain parameters. The minimum amount of weight for the Retail Banking test would be 50%, the minimum amount of weight for the Community Development Test would be 25% and the final 25% would be at the discretion of the bank as to how much more would be allotted to the retail banking and to the community development tests.

The purpose of realigning the three current tests and allowing more flexibility in how each test is weighted is to make the CRA more sustainable over time by achieving a win-win between a bank's need to be profitable and to manage risk and a community's need for capital and banking services. Advocates are concerned that the current Investment Test will be eliminated, but they seem not to recognize that banks can obtain an "outstanding" CRA rating without doing any community development lending because of the lack of specific weight given to community development lending compared to community development investments in an evaluation of a bank's CRA performance. While community development lending may have no weight, community development investments comprise 25% of the CRA rating! The irony is that bankers, who know how to assess and manage lending risk, understand community development lending, while community development investing, akin to venture capital investing, is foreign to what most banks do in the normal course of their business. Here, we are not talking about community development grants, but rather investments in equity funds and qualified tax credit ventures. The vast majority of banks do not have the resident expertise to evaluate such investment opportunities because it is not in their charters to engage in this business except to meet their CRA obligations. Fortunately, cautious banks may meet the Investment Test challenge by (i) making qualified community development grants and (ii) simply by buying mortgage-backed securities, which do not increase the overall availability of credit and are readily available in the market. JPMorgan Chase does not propose to eliminate the Investment Test, but rather to reorganize the current rule to combine all of the community development activities to allow banks to design and manage more rationale and meaningful community development programs.

3. The Definition of Community Development

JPMorgan Chase fully supports expanding the definition of community development to include affordable housing in designated disaster areas (in addition to LMI individuals) and community development activities that revitalize or stabilize designated disaster areas (in addition to LMI areas). Following September 11, 2001, many banks, especially banks located in New York, reached out to individuals affected by the disaster and offered to forgive late payments on credit cards, mortgages and small business loans, made emergency loans to small businesses in the area and provided grants and other types of relief. Many of these activities, because they were not directed primarily to LMI individuals, did not receive CRA credit, even though the banks went to extraordinary efforts to help their communities. In the event of a

disaster, natural or otherwise, JPMorgan Chase believes that CRA should recognize these contributions, regardless of the income status of the recipient.

B. JPMorgan Chase Opposes Expansion of the Regulation to Downgrade a Bank's CRA Rating Because of Violations of Certain Consumer Protection Laws

As JPMorgan Chase has previously said in prior comment letters, it opposes the expansion of the Regulation to downgrade a bank's CRA rating because of violations of certain consumer protection laws. JPMorgan Chase believes that the language of the current provision is more than sufficient to cover a bank's discriminatory or other illegal practices that are specified in 12 C.F.R. §___.28(i)(A)-(E) and therefore the new additions are unnecessary.

The new additions that can trigger a CRA downgrade are (i) discriminatory or other illegal practices in violation of certain specified as well as unspecified consumer protection acts; and (ii) violations of (i) above by a mortgage affiliate whose loans are used for CRA credit. JPMorgan Chase is surprised that the Agencies would consider expanding CRA into an umbrella "super-compliance" regulation when appropriate remedies already exist in these other regulations.

1. The Current Provision is Sufficient and Retains the Distinction between CRA Compliance and Compliance with Other Consumer Protection Laws

The overriding purpose of the CRA is to ensure that banks help meet the credit needs of the communities they serve, including LMI communities. The current CRA regulations were drafted to evaluate how well banks are meeting these needs. However well-intentioned, it is inappropriate to overlay the entire structure of consumer compliance on CRA. These are two distinctly different spheres and should be treated as such. With respect to the newly specified acts, each of them has its own compliance and enforcement mechanisms. Each of these laws was passed by Congress at different times to achieve different and distinct purposes. Compliance with each of these laws is already strictly monitored by the Agencies during consumer compliance examinations. Moreover, FIRREA was specifically enacted to provide a comprehensive framework of regulatory action and enforcement powers around compliance violations. It was not Congress' intent to have the Agencies impose the entire consumer compliance examination process into CRA.

The Proposal also implies that violations of state consumer protection laws could trigger a CRA downgrade. JPMorgan Chase opposes overlaying state consumer protection laws onto a federal CRA regulation. Some states, such as New York State, already have adopted their own

CRA laws. If a state perceives that violations of state consumer protection laws should affect the state's CRA rating, it can make that determination. Moreover, many state laws, such as some of the state "high cost" anti-predatory lending laws, are so complicated that it would be very easy for a mortgage lender inadvertently to violate one of their provisions without doing harm to any consumer.

It is unclear whether the rule envisions immediately stripping a bank of a current CRA rating or waiting for the next examination after a violation has been found in an affiliate's examination. The Proposal leaves many unanswered questions. The worst outcome of the Proposal is that it would change the nature of CRA from its special status as a proactive, business-driven regulation that increases access to capital and banking services to a catch-all for all fair lending regulations, including but not limited to ECOA, FHA, HOEPA, RESPA, the FTC, and TILA.

2. The Proposal Increases the Risk of a Financial Holding Company Losing Powers Granted by the Gramm Leach Bliley Act

Particularly troubling is the increased risk to financial holding companies of having the new powers granted to them under the Gramm Leach Bliley Act (the "GLB Act") taken away because of a CRA downgrade. A bank that currently has a "Satisfactory" rating could easily be downgraded to "Needs to Improve" for relatively minor violations of one of the consumer protection laws, such as the single failure to send a right of rescission notice. If Congress had intended that a bank's compliance with consumer protection laws could prevent a financial institution from engaging in securities and insurance activities, Congress would have included such language in the GLB Act. If adopted, the Proposal would undermine the purpose of the GLB Act--to allow financial holding companies to engage in a broad array of financially related activities.

3. The Proposal Would Penalize Banks whose Mortgage Affiliates are Examined and Create an Uneven Playing Field

Currently, all depository banks and their consumer lending subsidiaries are regularly and rigorously examined for compliance with the consumer protection and fair lending laws. The Proposal would address explicitly the consequences of an affiliate's illegal or abusive credit practices to a bank's CRA rating. The Proposal expands the potential for a CRA downgrade to include evidence of discrimination or illegal credit practices not only by the bank but also by any affiliate whose loans are included in the bank's CRA examination.

While the Proposal may, on its face, seem reasonable, in fact, it increases the risk of a CRA downgrade to those banks whose affiliates are examined for rigorous compliance with the fair lending laws. Banks whose affiliates are not examined would not be affected by the inclusion of an affiliate's loans in the new regulation. The Proposal ignores the fact that consumer-lending subsidiaries of holding companies are, with rare exception, never examined for compliance with the fair lending laws.

While the Federal Trade Commission is responsible for regulating these holding company subsidiaries for consumer compliance purposes, it uses litigation rather than examination as its enforcement tool. Litigation, of course, occurs only after a potential violation of law has occurred and nearly all litigation ends in settlement where the lender does not admit to any wrongdoing. It is highly unlikely, therefore, that banks that use loans from unexamined affiliates will ever have their CRA rating downgraded. The Proposal takes aim at those banks that already shoulder the highest level of regulatory scrutiny. Their examined affiliates already will pay significant consequences should a violation be found during an examination and those consequences include a program of strict remediation, a cease and desist order, civil money penalties and a referral to the Department of Justice for further investigation.

In effect, the Proposal creates double jeopardy for banks with examined affiliates by layering the results from affiliate examinations on top of the bank's examination and, potentially, the exam results of one agency on top of the examination results of a different agency. The unintended consequence of the Proposal is to encourage financial institutions to move mortgage lending bank subsidiaries to holding company subsidiaries to avoid double jeopardy and level the playing field with peer banks that use loans from unexamined affiliates in their CRA examinations.

In sum, CRA has been appreciated by lenders for its unique ability to make things happen that have an impact on communities. In the world of banking regulations, CRA stands alone as a rule that has evolved over time and affirmatively encourages banks to make a commitment to their communities. It should not be confused with specific consumer regulations that have been adopted over the years for purposes of consumer protection. It rewards banks for doing more in their local communities, for being creative in structuring complex transactions that can save local municipalities' tax dollars and for providing quality financial education in multiple languages.

None of these activities is specifically required and that is what makes the CRA unique and meaningful.

Thank you for the opportunity to present these views. I would be happy to discuss these issues with you.

Sincerely yours,

A handwritten signature in black ink, consisting of several overlapping, slanted strokes that form a stylized, illegible name.