

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

RE: RIN 3064-AC89

Mr. Feldman,

Thank you again for the opportunity to comment on the revisions to the Community Reinvestment Act (CRA). I submitted a comment letter on both the February 2004 and August 2004 Notice of Proposed Rulemaking and I am again pleased to comment on the new proposal.

I work for a medium size bank, the sole subsidiary of a bank holding company, with about \$400 million in assets and 13 offices located in southwestern Utah. For CRA purposes, we became a large bank on January 1, 2003 and last year completed our first large bank CRA exam. As I stated in my previous comment letters, the exam under the large bank rules, I would estimate, took about 10 times longer than the small bank exam would have taken, with substantially the same result.

As stated in the previous comment letters, community organizations generally expressed concerns about any reduction in regulatory burden and oversight, and the effects on residents of rural communities and residents of states with smaller financial institutions. It appears the agencies have unnecessarily tried to pacify the community organizations by proposing regulatory "relief" which would actually add to the burden of rural community banks. In reality, the concerns expressed by community groups are not well founded, at least not with the experience of our bank. We are located in rural southwestern Utah and serve a number of small communities. In fact, three of our thirteen offices are located in communities that have no other financial institutions. All of those offices were constructed prior to becoming a large bank for CRA purposes. We did not build those offices for CRA credit, but to accommodate individuals and businesses in those communities and to operate as a community bank. All we want is regulatory relief.

Community groups argue that eliminating the service test for mid-size banks will decrease the number of branches being constructed. I dispute this and cite that it is the small and mid-size community banks that are continuing to expand and build branches. But with additional regulatory burdens the process will become slower. As mentioned above, we continue to expand to support our communities, but not for CRA credit alone. Medium size banks such as ours play a very important role in their communities, many of which are rural communities. But the same regulations community activists demand are strangling smaller institutions and forcing them to selling to larger institutions that can better manage the regulatory burdens.

The FDIC has proposed to create a burdensome “Community Development Test” for intermediate small banks with assets between \$250 million and \$1 Billion. The community development test would be an additional requirement above the current Small Bank requirements. Under the proposed community development test for intermediate small banks, community development loans, qualified investments, and community development services would be evaluated together, resulting in a single rating for community development performance. A bank will still have to demonstrate adequate responsiveness to community development needs through community development loans, qualified investments, and community development services. The analysis of the proposal states that “... it is not the intention of the federal banking agencies to permit a bank to simply ignore one or more categories of community development.” With this, I fail to see how the community development test provides any regulatory relief or greater flexibility over the large bank exam. For true regulatory reduction for community banks, the agency should increase the small bank threshold without any additional requirements.

Request for Comments

The agency submitted a list of issues for specific comments. My comments are as follows:

- Is there another appropriate asset threshold to use when defining intermediate small banks, and, if so, why?

For true regulatory relief, the small bank threshold should be raised to at least \$1 billion without any additional requirements. If the community development test is adopted, a more appropriate asset threshold to use would be \$1 billion to \$2 billion. The first proposal issued in February 2004 pointed out that an increase of a small bank to \$500 million would take into account significant changes in the marketplace including substantial assets growth and consolidation. The agency should still increase the small bank threshold to \$500 million or preferably \$1 billion for the same reason. If the community development test is adopted, an intermediate small bank should be defined as a bank with assets between \$1 billion and \$2 billion. If an additional burdensome test is being added, additional regulatory relief should also be given by way of raising the threshold to \$2 billion. In reality, the only regulatory relief provided by this proposal is the elimination of the requirement of annual reporting. However, the large burden comes in during a CRA examination. An intermediate small bank will still have to collect and maintain data on community development lending, qualified investments, and community development services and provide this data to examiners. This really isn't a change from the existing large bank examination procedures. The small bank examination procedures only call for a determination of the geographic distribution of loans while qualified investments and community development services could be used to for an outstanding rating. I urge the agency to increase the threshold to \$1 billion without any additional requirements and remove the “community development” test.

- Should the assets size for small and intermediate small banks be adjusted on an on-going basis, based on changes to the Consumer Price Index.

Yes, the small bank and intermediate small bank threshold should be adjusted on an on-going basis. Again as mentioned in the February 2004 proposal, the proposed increase to \$500 million was to accommodate the changes in the marketplace including substantial asset growth. By adjusting the level on an ongoing basis, the agency may avoid a similar problem in another 10 years.

- Under the proposal, intermediate small banks will no longer be required to report data on small business, small farm, and community development lending. The agencies seek comment specifically addressing whether and how the public has used the loan information that has been reported to date.

Since becoming a large bank two years ago and having reported only two years of CRA data, we have not had anyone in the public request from us this information. In fact, since 1995, we have never had anyone in the public request to see our public file as is required for a small bank. This is one of the reasons why I think regulatory reduction is necessary for CRA and the elimination of data reporting will not have a significant effect on the public.

- Does the proposal provide more flexibility in how an intermediate small bank may apply its community development resources through a more strategic use of loans, investments, and services? Does the proposal have the potential to make the evaluations of those banks' community development performance more effective than under the current regulation?

By adding the community development test for intermediate small banks, the proposal does not provide more flexibility nor relieve regulatory burden as it relates to the CRA exam. The community development test is just restating the same standards required for a large bank. Under the large bank exam, a bank must demonstrate CRA involvement through the lending test, investment test and service test. The new intermediate small bank proposal still leaves the lending test but combines the investment test and service test. Because it will be a separate test, the community development test does not provide more flexibility and regulatory relief. An intermediate small bank will still have to compile the same information as if it were examined under a large bank. The community development test will not be more effective than under current regulation. For true regulatory relief and flexibility, the small bank threshold should be raised without any additional requirements.

- Should the community development test for intermediate small banks be separately rated as proposed? Should the bank's community development test performance be weighted equally with its lending test performance in assigning an overall CRA rating?

If the community development test is adopted for intermediate small banks, the lending test should have a larger weight than the community development test. The main purpose of the CRA is "... to encourage such institutions to help meet the **credit** needs of the

local communities in which they are chartered consistent with the safe and sound operation of such institutions” (emphasis added.) Credit needs should be determined primarily by the lending test. Investment and services aid in meeting the credit needs of the communities, but it is lending that actually meets the credit needs. Also according to the regulation under assigned ratings, “A bank that receives an ‘outstanding’ rating on the lending test receives an assigned rating of at least ‘satisfactory’ (see 12 CFR § 345.28(b)(1)). The proposal makes achieving a “satisfactory” rating for an intermediate small bank more difficult than for a large bank under the current regulation. A “satisfactory” rating for an intermediate small bank should be given if the bank receives an “outstanding” rating on the lending test, regardless of the performance of the community development test. If the community development test is adopted, would a bank be able to opt for the large bank examination rather than the intermediate small bank examination? As proposed, there will be many instances where a performance evaluation based on a large bank exam will reflect better on an institution than a performance evaluation produced from the intermediate small bank exam procedures.

- Does the existing definition of “community development” provide sufficient recognition for community services to individuals residing in underserved rural areas and designated disaster areas?

Prior to the 2000 census, many of the communities we service in rural southwestern Utah were in moderate-income census tracts. However, since the change in the year 2000 census tracts, many of those communities have been classified as located in middle-income census tracts. Investments and services in those communities now do not automatically apply since they are not in low- or moderate-income census tracts and it is harder to show they benefit low- or moderate-income individuals. The existing definition of community development does not provide sufficient recognition for community services to individuals residing in underserved rural areas. Including rural areas as part of the community development definition will help us show that we meet the service criteria.

As I stated in my previous comment letter, the most futile part of the large bank examination was the examination and verification of our investments for the investment test. Being a medium size bank serving a rural area, we find it difficult to find “qualified investments” for CRA purposes. Under the current rules, for a municipal bond to qualify for community development, the municipal bond must be issued to fund public improvements that stabilize and revitalize a low- or moderate-income neighborhood. As I stated above, because of the reclassification from the 2000 census, most rural communities we serve are not located in low- or moderate-income census tracts. In addition, a rural community will not spend the time to specifically designate such a bond for a community development purpose. (These rural communities believe this is a waste of time because everything they do is community development to them). Depending on the definition of an underserved rural area, this may greatly alleviate much of the burden associated with the investment requirement for CRA.

- Should a definition of “rural” be adopted, and if so which one? For example, should all areas outside a metropolitan area be considered “rural”?

A definition of “rural” would be helpful and needs to be provided. A simple definition would be that all areas outside a metropolitan area be considered “rural.” However, the definition may also need to include some areas inside a metropolitan area. For example, Washington County, Utah, was recently designated as a Metropolitan Area. Washington County, like many counties in the West, is comprised of a large area, about 2,400 square miles, a little larger than Delaware. Most of the population of Washington County is located within a 15-mile radius of the central city of St. George. We also service many of the other communities in Washington County which are clearly rural. Hence, the definition of “rural” may also need to include communities within a metropolitan area, which have those characteristics of being rural.

Alternatively, the agency could adopt a definition similar to the Census Bureau’s definition. The Census Bureau defines rural as all territory, population, and housing units located outside of urbanized areas. Urban is further defined as a densely settled area that has a census population of over 2,500 and consists of blocks that have a population density of at least 1,000 people per square mile and surrounding blocks that have an overall density of at least 500 people per square mile. (See <http://www.census.gov/geo/www/tiger/glossary.html>). The Census Bureau’s web site also has maps that show urban areas. The problem that I can see is that a single census tract may contain a mixture of both urban and rural areas. This will cause additional work in determining whether a property is rural. There are also some anomalies included with this definition. For example, Blanding, Utah is a rural community with a population of less than 3,000 residents. Blanding is located in extreme southeastern Utah, more than 100 miles from the nearest Interstate highway. However, according to the Census Bureau’s definition, Blanding is not considered rural because of the denseness of the population. Because of these anomalies, the Census Bureau’s definition should not be adopted.

- Should a definition of “underserved” be defined when used in connection with rural areas.

It appears that in the process of regulatory reduction, the agencies are also creating regulatory burdens by adopting wording that can be so subjective. There are many ways a community is underserved but the agencies will have a hard time finding a quantifiable definition that will fit most circumstances. Because of the subjectivity of term, the agencies should NOT include “underserved” as part of the community development definition. I understand that some commenters expressed the concern that a broader definition of rural would permit consideration of activities that benefit middle- and upper-income individuals. Activities that benefit middle- and upper-income individuals not only benefits the individuals but also benefits the community as a whole so I don’t know why there should be so much concern. Because of the difficulty of defining such a subjective term and to provide true regulatory relief, the agency should adopt the use of rural areas without the stipulation of “underserved.”

In conclusion, let me just restate that I strongly support regulatory relief by increasing the threshold for the small bank examination. However, I am opposed to the addition of a community development test because of the additional burden it will impose. The community development test as proposed would be more burdensome than the large bank exam procedures. Finally, I support the inclusion of rural areas (without the addition of “underserved”) as part of the community development definition.

Please feel free to contact me if I could be of further assistance.

Thank you,

David Eberhard
State Bank of Southern Utah