



October 12, 2004

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

RE: Proposed Changes to the Community Reinvestment Act Regulation

Dear Mr. Feldman:

The Conference of State Bank Supervisors (CSBS)¹ is pleased to have the opportunity to comment on the FDIC's Notice of Proposed Rulemaking (proposal) to amend the regulations that implement the Community Reinvestment Act (CRA.) In response to the proposal as outlined in greater detail below, CSBS supports amending the definition of small bank from those with more than \$250 million² in total assets to those with assets in excess of \$1 billion regardless of the bank's holding company status. CSBS notes that this change would not diminish the responsibility of any nonmember bank to support its community by providing access to credit, which is a primary tenant of the Community Reinvestment Act.

CSBS also views the proposed changes as a valuable tool to reduce regulatory burden for our nation's community banks, the vast majority of which are state chartered. Community banks have a long record of meeting the credit needs of both individuals and small businesses and provide critical fuel to our nation's economic engine. Community banks have faced a growing amount of regulatory requirements that may have the effect of stifling this critical component of our nation's economy. Accordingly, CSBS supports efforts to reduce regulatory burden when doing so does not compromise safety and soundness considerations or consumer protection.

Background

The FDIC's most recent proposal follows a series of interagency reviews of CRA regulations. Specifically, in 2001, the federal bank and thrift agencies jointly issued an advance notice of proposed rulemaking (ANPR), to solicit comment on the fundamental issue of whether any change to CRA regulations was beneficial or warranted. The agencies specifically requested comment on whether the definition of "small" banking institutions was

¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,331 state chartered commercial and savings banks and nearly 420 state-licensed branches and agencies of foreign banks.

² The current definition of small bank also includes a consideration of the total assets held by banks within a bank holding company.

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appropriate. This definition is pivotal in the CRA regulations because small institutions qualify for a streamlined evaluation based primarily on their lending record within their assessment area.³ Larger institutions are subject to a three part evaluation. Specifically, examiners evaluate a large bank's record of lending, investing and providing services within its assessment area.⁴

If the FDIC adopts the \$1 billion small bank definition outlined in the proposal, the percentage of banks considered large would drop from 21% of all nonmember banks which hold approximately 80% of all nonmember bank assets to approximately 4% of all nonmember banks which hold approximately 58% of all nonmember bank assets. The FDIC provided this data (reflecting March 31, 2004 statistics) for background purposes.

CSBS notes that a \$1 billion definition for small institutions is reasonable because the number of nonmember banks that would remain subject to the three part large bank evaluation hold the majority of the assets of all nonmember banks. The FDIC proposal also notes that although the percentage of *all* banks and thrifts considered large would drop from 20% in 1995 to 6.3% in 2004, the percentage of *assets* in all large banks and thrifts, subject to a three part evaluation, would decrease only modestly from 86.2% in 1995 to 85.1% as of 2004. This information highlights the comparative impact of the proposed "large bank" definition as it relates to the current definition established in 1995.

Consistent Review of CRA

CSBS supports consistency in the application of CRA rules for banks regardless of the type of charter they chose. Until recently, the rulemaking process of federal banking agencies reflected a goal of generally consistent application of the CRA. In fact, the goal of the 1995 changes (which established the Lending, Investment and Service "tests") to the CRA regulations was to establish more objective, performance-based standards that could be consistently applied to all financial institutions across the nation. In addition to the final CRA regulations issued on December 20, 1995, the federal regulatory agencies have provided interagency interpretive guidance in the form of questions and answers about the

³ Examiners currently evaluate small banks on factors including their: loan to deposit ratio, the percentage of loans in the bank's assessment areas, the record of lending to borrowers of different income levels (including businesses and farms); the geographic distribution of loans; and the bank's record of action responding to complaints about meeting credit needs in their assessment area.

⁴ Examiners evaluate the following factors when assessing the Lending, Investment and Services provided by large banks for CRA purposes: To evaluate the bank's Lending record: Examiners assess the number of loans made or purchased, the amount of loans made or purchased, the geographic areas where the bank is lending, the income of the bank's borrowers, the bank's record of community development lending, ways the bank meets the needs of low-to-moderate income individuals in their assessment area. To assess a large bank's Investment record examiners evaluate investments the bank made including the dollar amount, complexity, whether the investments respond to credit and community development needs, and whether there are other sources for the types of investments the bank made. To evaluate a bank's "Service" record examiners evaluate a bank's branch distribution among income levels, its record of opening & closing branches; delivery systems the bank utilizes to meet the needs of low to moderate income individuals, and the level of community development services the bank offers.

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regulations published in the *Federal Register*. However, recently, the agencies' record of consistency in the adoption of CRA rules has unraveled.

For example, on July 16, 2004, both the Federal Reserve Board (Board) and the Office of the Comptroller of the Currency (OCC) issued a statement withdrawing their proposals to raise the small bank asset threshold to \$500 million. Accordingly, the definition of a small bank (\$250 million in assets) and the corresponding criteria governing streamlined CRA evaluations may remain unchanged for national banks and state member banks. In contrast, on August 18, 2004, the Office of Thrift Supervision (OTS) released a final rule in the *Federal Register*, that effective October 1, 2004, redefines "small" savings associations as those with total assets of less than \$1 billion, without regard to holding company assets.

Both the OCC and the OTS have also recently announced that each agency will issue additional proposals in the near future that will address community development issues arising from fewer banks being examined under the existing three part large bank CRA evaluation. CSBS recommends that the FDIC assume a leadership role as the federal insurer of all banks and thrifts by bringing the federal agencies back to the table to identify a consistent approach to fulfill the initial intent of CRA when passed in 1977.

"Small Bank" Definition

As mentioned above, CSBS supports raising the asset threshold for a small bank from \$250 million to \$1 billion regardless of holding company status. We have communicated with small banks and are aware of the increased difficulty and cost associated with meeting the requirements of the large-bank CRA evaluation. With banks continually facing increased regulatory burden ranging from changes in the Home Mortgage Disclosure Act reporting requirements to the heightened focus on Bank Secrecy Act reporting, compliance costs are undoubtedly disproportionately placed on smaller institutions. CSBS is an advocate for reducing regulatory burden to address the expanding universe of bank regulation.

Proposed Definition for Predatory Lending

To better address abusive lending practices in CRA, the February 2004 NPR sought comment on whether the federal banking agencies should amend CRA regulations to specifically provide that federal agencies would consider a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral in cases where lenders extend credit without regard to a borrower's ability to repay. Evidence of such abusive practices would adversely affect the institution's CRA performance evaluation.

Other regulatory agencies noted that commenters strongly opposed including this single, abusive, asset-backed lending standard in the CRA regulations and, accordingly, withdrew this provision of the previous NPR. CSBS feels strongly that the asset-based definition of abusive lending in the previously published NPR is not sufficient to address the challenge of deterring abusive lending. In our April 2004 comment letter CSBS requested that such a narrow definition of abusive lending as a tool to identify and prohibit predatory lending be withdrawn because it could become the de facto universal standard in connection with predatory lending activity. There are numerous other factors that should be considered when determining whether an institution has participated in a pattern or practice of abusive

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lending. Additionally, CSBS notes that predatory lending is not specifically addressed in the original CRA statute and should be more thoroughly reviewed and deterred through other means, including state predatory lending statutes and unfair and deceptive practice statutes at state and federal levels. We continue to request that the FDIC formally withdraw this aspect of its CRA regulation.

Conclusion

CSBS supports the proposed change in the definition of small institution to \$1 billion in assets. We recognize that all banks, regardless of any proposed changes, will continue to remain subject to an evaluation of their lending record within their designated assessment area. Many observers of the CRA review process have noted that the original intent of the Congress was primarily to ensure that banks were not engaging in “red lining”, the practice of accepting deposits from certain communities that they served but refusing to lend in those communities. CSBS supports this keystone premise at the heart of CRA and notes that the nation’s community banks, the vast majority of which are state chartered, have a proud record of meeting the lending needs of their communities and serving as leaders in the communities they serve.

CSBS also strongly believes that the federal bank and thrift regulatory agencies must remain consistent in issuing joint regulations and interpretations in regard to CRA. In its role as the federal insurer of all banks and thrifts, the FDIC is uniquely positioned to renew coordination efforts among the agencies. As the professional organization for the nation’s state banking agencies, CSBS would welcome opportunities to work with the federal regulatory agencies in developing guidance in this area. Currently, seven state banking departments have authority to enforce their state’s CRA law and other state banking departments review compliance with federal CRA requirements for their state chartered banks. Cooperative efforts between state and federal regulatory authorities will reduce regulatory burden, ensure that financial institutions fully understand compliance requirements, and will have a greater impact than individual efforts at either the state or federal level.

Thank you for your consideration. We invite you to call on us if we can provide additional information as you evaluate this important subject.

Best Personal Regards,



Neil Milner
President and CEO

cc: Chairman Donald E. Powell
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