American Bankers Association
Building Success. Together.

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By electronic delivery

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Docket ID OCC-2010-0011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
205h Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1386

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: RIN 3064-AD60

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Re: ID OTS-2010-0019

Re: Community Reinvestment Act Regulation Hearings

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the current efforts of the federal banking agencies to consider whether and how the Community Reinvestment Act (CRA) rules should be revised to better serve the statute's goals.

ABA believes that the banking industry has established a strong record of performance within the spirit and letter of the Community Reinvestment Act, because serving our communities is what banks do and it is why traditionally bankers chose careers in banking. In fact, Federal Reserve Board Governor Betsy Duke recently noted that, "The fate of banks is deeply intertwined with that of the cities and regions they serve."[2] Banks are tested in the marketplace every day to demonstrate their responsiveness to the needs of their local communities. Those that do not serve the credit needs of their local communities do not prosper. It is, therefore, not surprising that the banking industry succeeds at satisfying community credit needs. Thirty-three years of CRA testing have proven that banks focus on and meet the credit needs of their local communities.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.

[2] *Fostering a Healthy Credit Environment*, remarks by Elizabeth A. Duke, member of the Board of Governors of the Federal Reserve System, at Ohio Bankers Day, Columbus, Ohio, June 30, 2010 at http://www.federalreserve.gov/newsevents/speech/duke20100630a.htm

Over the past thirty-three years, the evolution of the CRA evaluation process has not been without difficulties, but it has improved. Still, there are steps that will enable CRA to recognize better the responsiveness of bank efforts to serve their local communities' needs.

Overview of ABA Comments

Fundamentally, ABA believes that existing CRA standards provide an adequate yardstick for evaluating bank performance in helping to meet the credit needs of their respective local communities. The current economy is in a protracted period of economic challenge, and Congress recently adopted legislation that is far more sweeping than anything that has ever affected the financial industry in the United States. Other legislative and regulatory changes are also affecting business models and products and services banks offer their customers. In addition, the Administration and Congress are preparing to consider housing finance issues, and it is possible that Congress will review CRA. ABA acknowledges the agencies' initiative in holding these hearings to gather information and comments from interested parties under these trying times, but we strongly recommend that the agencies proceed cautiously when disturbing CRA expectations during this period of economic and regulatory upheaval. Exacerbating regulatory and economic uncertainty by changing the rules of CRA when credit availability is already under regulatory stress will not help the recovery of America's communities.

ABA believes that the agencies can take steps that encourage the environment for lending, which will in turn be reflected in continued positive CRA performance. Moreover, we believe that CRA regulatory practices can and should be improved to recognize more fully the positive impact that banking activities are having on local communities, including recognizing the impact of banking activities on the entire community, as comprehended in the law. ABA believes that communities across the nation would benefit if the agencies made it easier to reward activities that benefit the entire community with CRA recognition. Among the possible improvements that the agencies should consider are:

- Expanding the range of neighborhoods whose revitalization or stabilization can qualify for favorable CRA consideration;
- Encompassing all forms of financial literacy programs for positive CRA recognition; and
- Applying performance criteria and performance context considerations more flexibly to enable services to rural areas to receive more deserving consideration under the rules.

ABA does not believe that wholesale changes to existing CRA standards covering traditional bank assessment areas or affiliate activity are warranted. Neither are they warranted with respect to illegal discrimination since that is better addressed by powerful enforcement statutes. Certainly, no new data collection obligations should be imposed; indeed, wherever possible such burdens should be eliminated or streamlined. Finally, the CRA rating and public evaluation process is operating with full public notice and disclosure and should not be modified by introducing unnecessary complications.

CRA Performance Tests, Asset Thresholds and Designations

The CRA Exam Process Reflects the Success of Banks in Serving Their Communities. The Community Reinvestment Act is a mandate to federal banking regulators to encourage and to assess the record of banks helping to meet the credit needs of the local communities they are chartered to serve, consistent with safe and sound operation. It is the statutory bedrock principle underlying CRA that access to credit must be predicated on safe and sound operations. No community is ultimately aided by non-performing loans or by financially struggling financial institutions. This critical element been re-emphasized recently as we have seen how imprudent lending practices and policy incentives divorced from financial reality can result in bad loans that cumulatively harm the local community. Observing safe and sound standards is what assures regulators, banks, and the public that properly underwritten loans strengthen our communities—not undermine them.

CRA was enacted in 1977, but by the early 1990s there was almost unanimous dissatisfaction with a CRA regulatory process that used a complex evaluation process based on a bewildering set of 12 factors. To address these problems, after extensive review and effort, important changes were made to the regulatory requirements under CRA and to the examination process itself in 1995. The post-1995 CRA loan examination process reflects banks' service to their communities far better than the old examination procedures.

Ten years later, when the 1995 amendments were reviewed and then revised, the changes were minimal. Most observers realized that the large-bank CRA performance evaluation worked as redesigned in 1995 and that the small-bank performance evaluation introduced in 1995 helped reduce burden.

Revisions to the CRA Performance Test

The current thresholds should be adjusted for greater transparency and simplicity. ABA believes that the asset size thresholds need to be adjusted to reflect better the make-up of the banking industry today. At mid-July, there were 617 banks each holding assets of more than $1.098 billion. While these 617 banks represented only 7.8% of all commercial depository institutions, they held just under $12 trillion in aggregated assets and just over 88% of all industry assets. Meanwhile, there were 7,324 banks, 92.2% of all banks by number, which each held less than $1.098 billion in assets and collectively held 11.7% of industry assets. As a result, small banks which represent a significantly smaller portion of industry assets are still subjected to extensive performance evaluations. This burden weighs especially heavily on community banks in the intermediate small bank tier.

ABA is seriously concerned about the regulatory burden imposed on community banks, which will dramatically increase with implementation of the Dodd-Frank Act (with at least 5,000 pages of new regulations being generated from just three of the 16 titles of the Dodd-Frank legislation in the near term), to say nothing of other regulations that are likely through updates to the Basel Accords, new small business initiatives, increasing mandates on data security, and new anti-money laundering efforts. This overwhelming onslaught of regulatory burden – what some are calling a tsunami of regulations – is causing bankers and bank boards to re-assess whether they should continue operating independently. Separately, it is worth noting that 140 banks were closed in 2009. In 2010, we are well on the way to reaching 200 banks closed. The great

majority of these are community-based organizations. One need only look at FDIC statistics and the number of banks on the FDIC problem bank list to understand the pressures experienced by many community bankers.[3] ABA estimates that the pressures on bank consolidation produced by new legislation and regulations could result in 1,000 fewer banks by the end of the decade. We do not consider that a positive development for local communities.

When the CRA rules were changed in 1995, adding a tiered approach to CRA evaluations with a simplified assessment for smaller institutions, it was seen as a welcome relief from some of the regulatory burden of CRA. In 2005, the agencies further acknowledged the impact of CRA regulatory burden by removing the data collection requirements from banks under $1.098 billion in assets, although ABA believes that they made the mistake of creating a new tier of intermediate small banks which only partially eased burdens for that new mid-level – and in some respects actually increased the CRA paperwork burden for these banks. ABA believes it would be far simpler and more appropriate to eliminate this mid-tier of intermediate small banks and return to the simpler and more effective two-tier analysis for all banks with assets less than the large bank threshold. A return to the simpler dichotomy of CRA tests would enable banks under the single threshold between large and small to demonstrate performance using the stream-lined performance criteria and could still permit such banks to receive additional favorable consideration for community development lending, qualified investments, and community development services.

Similarly, since CRA evaluations are based on an institution's charter, ABA recommends that the asset threshold be at the charter level and not aggregated with other depository institutions within the holding company. And finally, while ABA supports the regular adjustments to the thresholds to reflect changes to the consumer price index (CPI), the current mechanism results in odd figures that can be somewhat confusing. For example, the current threshold for a large institution is $1.098 billion. ABA believes that it would be simpler and less confusing to adjust to a more rounded reference number that is easily remembered by bankers and examiners.

Strategic Plan. One of the innovations added by the regulations in 1995 was the strategic plan. When it was added, the regulators expected that it would be an attractive program for banks with less traditional business plans. The current provision, substantially the same as it was when it was adopted in 1995, provides that a bank will be assessed under this test if it has submitted a plan to its primary regulator for evaluation, the regulator has approved the plan, and the strategic plan is in operation and has been in effect for at least one year. Despite initial expectations, almost no institutions have considered, let alone elected, the strategic plan option.

A number of reasons have been advanced to explain why institutions do not use the strategic plan. For example, most banks have a business plan, and the question has been raised

[3] According to the recent FDIC statistics in the *Quarterly Banking Profile*, as of June 30, 2010 the number of insured commercial banks and savings institutions fell by 104 in the second quarter, from 7,934 to 7,830. Significantly, this is the first time in almost ten years that the number of reporting institutions declined by over 100 in a single quarter (the number declined by 113 in third quarter 2000). During the second quarter, 57 institutions were absorbed by mergers into other charters and 45 insured institutions failed. For the first time in the 38 years for which data are available, no new insured institutions were added during the quarter. And, the number of institutions on the FDIC's "Problem List" continues to grow, increasing from 775 to 829 during the quarter. These problem banks hold $403 billion in assets.

why banks would not find a similar CRA evaluation plan appealing. However, the problem and the distinction between a bank's business plan and the CRA strategic plan is that a bank's business plan can evolve and change as banking and local markets and economies change over time. A bank's business plan has the flexibility necessary to running a business. A strategic plan, on the other hand, is a regulatory construction, set in place, requiring approval by the regulator and presumably requiring new review and approval of alterations or adjustments. The CRA strategic plan does not readily adapt to changing conditions. With the many gyrations in the national economy in the past few years, to say nothing of recent statutory and regulatory changes, it would have been both unsafe and unsound for a bank to be bound by a strategic plan that may have been drafted and approved three or four years earlier. In other words, the current CRA strategic plan option does not provide sufficient flexibility or adaptability for changing conditions.

Second, to use the strategic plan requires public input on the plan, both informally and through publication in the local newspaper to make the information available to the public.[4] In other words, the bank must broadcast to the community – including its competitors – its business plans. No business entity wants to disclose its plans publicly and let its competitors take advantage of that information - but that is what is mandated by the strategic plan option. Can anyone imagine Apple announcing the design for its next iPod or iPhone while still in the design-phase of product development? This over-transparency is another serious barrier and deterrent to the use of the strategic plan option.

The strategic plan option might be made more viable for non-traditional banks but only if the rules are revised to make the option far more flexible and simpler to change and update to respond to changing conditions. The problem is that volatility and variability in local market conditions – especially in the context of recent experience – is likely to deter most banks from considering this option. Moreover, the strategic plan option lacks sufficient latitude for delineating assessment areas, one of the more fundamental challenges to successfully capturing representative performance of banks that have non-traditional business plans.

Geographic Coverage

The current method for evaluating a bank's performance using the current definition of assessment area only needs minor adjustment to enable non-traditional banks to identify a sufficient portion of their retail footprint that represents the overall performance of the institution. One of the key elements to evaluating CRA performance is the designated geography or market the bank has determined it can efficiently and adequately serve. This "assessment area" is a geographic area delineated under section 41 of the CRA rules and is clearly geographically based in the legislation. Generally, under the regulations it is a geographical area consisting of whole geographies that is not drawn in such a way as to exclude minority communities or "redline" areas.[5] Moreover, the rules provide that an assessment area cannot be created arbitrarily to exclude low- or moderate-income areas and is generally drawn to stay within political subdivisions or metropolitan statistical areas (MSAs) or state borders.

[4] Section 27(d).

[5] If one operates on the premise that CRA is an anti-redlining statute, then the assessment area is the mainstay of CRA evaluation since it clearly delineates the areas the bank will serve.

Where a bank serves a substantial area that crosses one of these borders, the rules provide that it should designate a separate assessment area for the second geography.

ABA believes that it is very important to acknowledge that in the past 15 years, since the 1995 revisions to the CRA rules, there have been literally thousands of CRA performance evaluations conducted by hundreds of examiners. Seldom has the assessment area been questioned, demonstrating the validity of the current method. In other words, for most traditional community banks, the current assessment area definition works well and needs no modification. It captures the geographic areas that describe the bank's recognized market. Although many banks take advantage of delivery channels other than physical branches to serve their customers, most banks use these alternative channels to supplement and not supplant the geographic area represented by the bank's branch network.

For larger regional banks built upon a branch-based delivery model, the assessment area usually captures the institution's retail footprint adequately if not completely. The only real challenge in these cases tends to be the regulatory requirement that forces the examiner to parse a statewide operation into component MSAs and non-MSA areas. This adds examination burden and public evaluation complexity, but rarely provides material additional value in understanding bank performance that could not be garnered by using a statewide assessment area alone.

The remaining challenge is addressing institutions with a non-traditional business model. However, this challenge is not insurmountable and does not require wholesale changes to the current assessment area performance model. The key is capturing those geographic markets where an institution has a significant business presence and in the aggregate adequately represents bank performance. However, it should not be so broad as to incorporate any community where a bank has only a relatively minor presence. For example, pending legislation in Congress[6] would apply CRA requirements and incorporate any geography where a bank has one-half of one percent of the loans. ABA believes there are serious problems with that approach. First, the percentage is far too small. In some rural geographies, one or two loans could easily reach that level. If the threshold is too low, it will discourage banks from reaching out to individuals and communities outside their assessment areas. It also places an inordinate burden on the members of the FFIEC to analyze and constantly update the loan volume in each geography across the United States to let banks calculate whether the trigger has been reached. And, it fails to reflect markets the banks can be expected to serve and frustrates the 1995 goal of creating recognizable assessment areas and threatens to renew the debate about the correctness of the assessment area that the 1995 reforms put to rest.

A concrete example of an alternative approach is contained in OTS's handling of the State Farm examination of 2007.[7] Although the institution has a single headquarter/branch assessment area covering the Bloomington, Indiana MSA, the OTS evaluates other MSAs that make up a significant portion of State Farm's total lending activity. By capturing these MSAs

[6] Community Reinvestment Modernization Act of 2009, H. R. 1479, section 103, *Provisions Relating To Improved Responsiveness Of Insured Depository Institutions To Community Reinvestment Act Of 1977* would adjust the designation of assessment area so that "each community in which the regulated financial institution makes more than 0.5 percent of the total amount of loans" would be included.

[7] See http://www.ots.treas.gov/?p=InstitutionSearch&iid=14640.

outside the assessment area, OTS is able to evaluate sufficient lending activity to arrive at an overall performance rating representative of State Farm's operations.

Although this approach is supported by current CRA Q&A's, the banking agencies could more explicitly affirm this option by amending the actual CRA regulation. Basically, such an amendment would let the bank aggregate MSA or non-MSA areas where the bank has a significant retail presence in a way that captures the majority of the institution's deposit or lending activity and represents the institution's overall CRA performance. Just as traditional bank's assessment area designations do not capture 100% of the bank's lending activity, there is no reason why a more flexible assessment area designation for non-traditional banks must capture more than a representative segment of the bank's lending activity. ABA notes that this regulatory revision of "assessment area" should only afford an option for non-traditional, non-branch based banking operations where the existing assessment area definition does not adequately enable the institution to demonstrate its CRA performance.

While ABA agrees that evaluations should focus on performance that serves a bank's assessment area, ABA also recommends that the agencies be more flexible in supporting voluntary activities outside a bank's assessment area. It appears that some examiners may be too rigid in determining whether a bank has done all it must do inside an assessment area before considering other activities outside the assessment area. As a result, some institutions shy away from activities outside the assessment area altogether. ABA notes that there is precedent for encouraging activities outside an assessment area. For example, under the guidance in the Q&A's at section 12(g)-4, activities that benefit a minority- or women-owned institution – even if outside the bank's assessment area – are given favorable consideration.[8] Another step the agencies may take in this direction is to include Community Development Financial Institutions with minority- and women-owned institutions. ABA emphasizes that providing favorable consideration for such community development activity outside an assessment area must not be compelled but should only be an option for the individual bank to elect.

Ratings & Incentives

The current structure for assessing CRA performance. One of the questions raised by the agencies is whether and how the current rating system for CRA performance evaluation should be changed. Currently, a bank is rated on its performance through a detailed set of performance criteria[9] that produces a rating of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance among the components of the applicable test. These components are then combined to reach an overall rating of outstanding, satisfactory, needs to improve, and substantial noncompliance. ABA would strongly oppose anything that adds to this complexity.

[8] These activities include deposits and capital investments, purchasing or participating in loans, lending personnel or providing other technical expertise, providing financial support to allow the minority- or women-owned institution to partner with schools or universities to provide financial literacy education, and provide free or discounted data processing systems.

[9] The factors that are used to assign ratings are fully detailed in Appendix A of the CRA rules, e.g., 12 CFR 228 Appendix A for state member banks.

For example, some argue for a more detailed analysis, such as a scale similar to the 100-point scale used for grading school students. The mistaken belief is that a more detailed point system would better reflect a depository institution's performance. ABA believes that such a detailed calibration introduces a false sense of precision that does not really contribute to an appreciation of the bank's performance. Moreover, it could set up a variety of misleading comparisons among banks, across geographies, among banking agencies, and even among examiners. Instead, such a scale only increases the contentiousness of the evaluation process by creating disputes over the correct assignment of points that distract focus from the quality of the overall performance and – more critically – the benefits to the local community. Adopting a detailed grading system such as that used in schools can lead to needless arguments about whether a particular performance merits an 88 or an 85. Any school teacher can tell you that minor point differences can lead to challenges and arguments. ABA does not believe CRA evaluations would be well-served by adding such a potential. Agencies would never be able to manage consistency of examiner judgment concerning their assignment of a particular numerical grade. Moreover, it would dramatically increase the bureaucratization of a process that already suffers from bureaucratic problems.

ABA believes that the current system appropriately communicates the agency's evaluation of a bank to its community's constituents. Those community members who are interested in differentiating among the banks in their area can read the full public evaluation to better appreciate the nuances of differing banks' records that receive similar overall ratings. Rather than have the agency attempt to weight those distinctions using a more elaborate calibration, readers can decide for themselves which bank's record warrants their support or criticism.

Steps should be added to the evaluation process to recognize positive CRA performance. Another question raised by the agencies is whether the regulators should incorporate incentives to encourage and recognize those institutions with superior CRA performance. Some have characterized this as using carrots instead of sticks to encourage CRA performance. If a bank is making extra effort and performing in an outstanding way, there should be recognition – but under the current system, that does not happen.

Outstanding performance presumably benefits the community being served as well as the bank itself, and therefore such activities and products and services carry their own rewards for all involved. Currently, the only regulatory reward for a bank's outstanding performance was added by the Gramm-Leach-Bliley Act of 1999. Under the statutory change, which applies to banks with $250 million or less in assets, banks which receive an outstanding rating are not examined for compliance again for five years, while banks with a satisfactory rating are not re-examined for four years.

In conversations with bankers across the country over the last 15 years – especially community banks – the real reward is the value of public recognition associated with outstanding service to the community. As a result, it has been suggested that even the simple step of public recognition by the regulatory agencies that a bank has done an outstanding job would be a positive step. Although the agencies issue a press release when they announce quarterly exam ratings, it may be useful specifically to identify "outstanding" institutions in the release itself, rather than just link to the list of all ratings making up the quarterly summary.

Among the incentives established in the 1995 CRA rules was the provision to reward "innovative" activity. The agencies understood that sometimes getting new programs underway was a challenging process and often did not result in concrete results at the outset. Consequently, they sought to provide "extra credit" for those initiatives. Unfortunately, it has not always worked in practice as well as originally hoped. Anecdotal evidence suggests that even community groups are concerned that examiners discourage activities that continue to support communities because they are no longer new, i.e., no longer "innovative." As a result, activities that are truly beneficial and that support the community may be discontinued because an examiner deems them not worthy of CRA consideration because they are no longer "innovative." The agencies should continue to recognize activity that persists in delivering service to the local community even when the underlying program has become established and is no longer strictly "innovative." Lack of "innovation" is not a reason to discount activity. Credit for what is proven to work deserves its fair share of consideration.

ABA believes that the concept of rewarding innovative or creative solutions is important, but continuing success from past innovation also deserves favorable consideration in line with their responsiveness to community needs. Rewarding innovation should be better monitored to assure it is utilized appropriately and does not become a barrier to activities that benefit the community.

Another area that warrants consideration for more effective use of performance criteria to assure that favorable performance is properly captured is in the area of serving rural communities. Bankers continue to express frustration with how CRA is applied to rural communities that face declining populations and lack well-defined neighborhoods, but are subjected to expectations developed for the inner city. It is the nature of the calculus of determining the income tranche of non-MSA geographies that they most often are categorized as middle income. Given the bias of current performance criteria to grant greater favorable consideration to low- and moderate-income (LMI) activity, service to rural geographies can be short-changed because it is labeled as serving middle-income geographies. This can be corrected by better application of performance context considerations to the activity being evaluated in what banks and examiners recognize as rural communities. It is another case where using the flexibility of the CRA standards to interpret the numbers can better reflect the real value delivered by a bank to its community.

Affiliate Activities

As a statutory matter, a depository institution is evaluated based on its charter. The regulator that conducts the evaluation of the institution's performance is the regulator that supervises the charter. In fact, one of the challenges banks sometimes face is when two different charters within the same holding company structure receive differing and inconsistent performance expectations from different regulators – or even when a holding company with two similarly chartered banks located in different parts of the country receives inconsistent CRA evaluation treatment from different regional offices of the same regulator.

As stated in the regulation, the agencies are charged with assessing "an institution's record of helping to meet the credit needs of the local communities in which the institution is

chartered."[10] ABA agrees it is appropriate to allow institutions to incorporate affiliate activities – at the institution's option – to include instances where certain activities are conducted through an affiliate. This latitude only increases the capacity of institutions to serve their communities and brings more resources under CRA evaluation. Although some community groups have criticized this option as inviting cherry-picking by the chartered bank, the agencies have incorporated sufficient controls to prevent institutions from gaming the system where affiliate activities are evaluated. This flexibility allows regulators to adjust review so that it is consistent with the business model of the institution.

Given the current *statutory* constraints, the agencies clearly have no authority to reach beyond the charter to compel banks to include affiliates that are not operating subsidiaries in the evaluation of the bank's CRA performance.

Small Business and Consumer Lending Evaluations and Data

Data Collection should be streamlined and updated. When the agencies overhauled the CRA regulation in 1995, one of the elements added was new data collection requirements on small business and small farm lending. This revision attempted to minimize the burden of such data collection by using existing definitions of such lending and by leveraging existing reporting obligations. ABA encourages the agencies to continue to explore ways to simplify and streamline the data collected and to ensure that the data that is collected is useful for CRA purposes. ABA also encourages the agencies to explore other data that are being collected to see if they meet the need. It is important to acknowledge the many new data sets that must be collected under recent federal legislation and the additional burdens that these requirements involve. That should point agencies toward finding ways to minimize and reduce data collection mandates wherever possible.

Access to Banking Services

Recognizing improved penetration of underserved markets in a bank's community is a cornerstone of CRA evaluations. The premise of the 1995 CRA revisions was that this can best be demonstrated by evaluating the actual lending and community development achieved by a bank in response to its community's needs rather than awarding credit for simply sponsoring particular programs. This emphasis on actual performance rather than program endorsement should continue.

As noted previously, the current CRA regulations contain criteria to encourage and recognize new initiatives that take time to achieve noteworthy performance. In that vein, adoption of innovative product design or features for attracting underserved customers already is recognized under CRA regulations. In addition, ABA supports providing favorable consideration for participating in pilot programs that explore new ways to meet local community credit needs.

[10] CRA Regulations, section 11(b), Purposes.

While CRA focuses on credit, ABA also acknowledges that savings is an important goal for bank customers. Many ABA members are financial supporters of the national *America Saves* program.[11] In addition, the American Bankers Association has established an affiliate that since 1925 has helped support banking and financial educational, and which has strongly encouraged and supported bank efforts to encourage savings.[12] The American Bankers Association Education Foundation is an alliance member of the FDIC's *Money Smart* program.

A fundamental tenet of financial education is that no one is ready to borrow until he or she already has a good savings program, because good savings habits ensure that borrowing is done wisely, to manage income rather than to live beyond one's income. Inasmuch, therefore, that savings are an important support for credit, it is entirely appropriate that good savings programs be recognized for CRA purposes, consistent with the recognition in the act that credit services "as well as deposit services" are related (Section 802(a)(2)).

Services for historically underserved and distressed areas should be promoted and encouraged. One of the questions that the agencies have raised is what steps could regulators take to encourage additional efforts to reach out to areas that are underserved or distressed. ABA believes that one of the positive steps taken with the 2005 revisions was to expand CRA consideration for areas that have been impacted by natural disasters or distressed or underserved geographies. ABA believes that these efforts should be both supported and expanded. To begin with, we urge the banking regulators to oppose legislative efforts that would eliminate favorable CRA consideration for provision of services to underserved, distressed or disaster areas that might otherwise be outside of a bank's normal CRA assessment area. For example, HR 1479, the CRA Modernization Act of 2009, would eliminate these programs,[13]a step ABA believes would be a mistake.

Community Development

The CRA regulations can be improved by expanding the scope of activities that qualify as community development and permitting sufficient exam flexibility to count favorably such activities as CRA performance. The term "community development" does not appear in the Community Reinvestment Act. Nevertheless the term was used as part of the CRA twelve-factor test and was more specifically defined in the 1995 amendments to the CRA regulations. ABA believes that the 1995 rules took too narrow an approach to "community development" activities. In adopting CRA in 1977, Congress determined that the nature of a

[11] See www.americasaves.org.

[12] The ABA Education Foundation's mission is to help bankers make their communities better through financial education. The foundation operates two national financial education programs for bankers, Teach Children to Save and a monthly e-mail bulletin about financial education, advocates for banker-delivered financial education, such as in-school banks, and represents bankers within the financial education arena, specifically as part of the Jump$tart Coalition for Personal Financial Literacy's Board of Directors. Through its national programs, the ABA Education Foundation has helped nearly 100,000 bankers teach personal finance skills to about 4 million children and young adults. Founded and funded by bankers, the foundation works closely with a board of bankers and is a subsidiary of the American Bankers Association.

[13] Section 101 of the legislation would repeal all the amendments adopted by the agencies in 2005, including the expanded definition of community development that benefits disaster areas and underserved rural communities.

bank's affirmative obligation was "to help meet the credit needs of the local communities in which they are chartered." It is important to understand that the statutory mandate for examining banks charged agencies to assess the bank's "record of meeting the credit needs of **its entire community**, including low- and moderate-income neighborhoods…" In other words, activities that benefit low- and moderate-income areas are important, but not to the exclusion of addressing the convenience and needs of other neighborhoods.

Community development activities are currently defined by the CRA regulations as affordable housing for low- and moderate-income individuals, community services targeted to low- and moderate-income individuals, activities that promote economic development by financing businesses or farms or activities that revitalize or stabilize low- or moderate-income geographies, designated disaster areas or distressed or underserved non-metropolitan areas designated by the agencies. This definition is further refined by the Q&As issued by the agencies to clarify that it is not necessary that a community development activity be limited to activities that promote economic performance or those that occur within a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area.[14] However, examiners are not always as flexible as the Q&As and do not grant the latitude to include non LMI areas or individuals. More important, it is not always easy for a depository institution to demonstrate that the individuals served are low- and moderate-income, but unless that fact can be easily proven, examiners are reluctant to grant credit for projects. As a result, many activities that might benefit the community as a whole are effectively lost from CRA view. If a depository institution cannot categorically demonstrate that the beneficiaries of an activity are LMI, the experience of some banks suggests some examiners automatically deny CRA consideration. ABA believes that this is inconsistent with the law that requires banks to meet the credit needs of the community, not just particular parts of the community. We believe that greater flexibility is needed to keep in view all of the community and its parts and to grant favorable CRA consideration for activities that benefit families and businesses wherever located in the local communities – especially in the current economy where any activity that helps stabilize or encourage job development is vital. A loan to expand a new repair shop creates jobs regardless of whether the repair shop is located downtown or in the suburbs.

One of the positive steps taken with the 2005 regulatory changes was adding favorable CRA consideration for activities that benefit disaster areas and under-served areas. ABA supported this expansion of the definition, since these are the very activities that CRA should support. For example, the agencies often encourage depository institutions to work with consumers and communities affected by natural disasters,[15] and it only seems appropriate that these efforts be reflected in CRA. As an example, banks involved in financing or supporting oil spill remediation or income replacement efforts in the Gulf of Mexico region should receive CRA credit for activities designed to assist those affected by the Deepwater Horizon Oil Spill. These efforts demonstrate that banks provide credit and services in response to the full range of economic distress in their communities. Projects responsive to the threats to entire local communities and industries (e.g., fishing and hospitality) should not be parsed to determine their specific LMI impact and then have CRA credit limited to those portions. Agency examination is

[14] CRA Questions and Answers, section .12(g)-1 and .12(g)-2.

[15] For example, banks were encouraged in early August to take steps to help areas in Texas affected by Hurricane Alex, see http://www.fdic.gov/news/news/financial/2010/fil10046.html.

mandated to record performance in a bank's entire community—not forgetting LMI areas, but not ignoring any other neighborhood or community segment either.

ABA also believes that these are the kinds of activities that should not be restricted to a bank's assessment area. For example, following the devastation wrought by Hurricane Katrina along the Gulf Coast in 2005, many banks across the country were able to provide a host of services to help in recovery efforts – including offering data processing services. Examiners should be encouraged to use the full flexibility of the current Q&As to give favorable consideration to activity outside a bank's standard assessment area for such beneficial activities.

Overall, ABA urges the agencies to expand the definition, interpretation and application of "community development" to give better recognition to bank efforts to develop their entire communities. This can be accomplished in several ways. First, revitalization or stabilization of neighborhoods should not be restricted to LMI geographies. Although motivated by a well-meaning intent to capture the mandate "to include LMI neighborhoods" in the examination of an institution's record of meeting the credit needs of its "entire community," the regulation has caused examiners to exclude appropriate consideration of the revitalization or stabilization activities in middle- or higher-income neighborhoods. For example, while some examiners have recognized the long-term value of income integration - mixed-income communities where low-income families are exposed to other classes and not segregated in poor communities - the current definition only gives credit for activities in low- or moderate-income communities. This suggests that LMI neighborhoods should be perpetuated as segregated enclaves rather than integrated into the broader community. Instead, integration through these mixed-housing developments helps leverage market rates for housing stock to achieve more affordable rents or lease rates for those with lower incomes. Wisely, the agencies have liberally interpreted the regulation in several Q&As to avoid such a narrow definition. Nevertheless the regulatory language remains restrictive and unchanged since 1995. At a minimum, ABA believes that the revitalization prong of the community development definition should be expanded at least to include activities that benefit middle-income geographies, although this would still fall short of the statutory requirements of recognizing credit needs of the entire community.

The agencies seem to understand the need to broaden the scope of revitalization activities that receive favorable consideration beyond LMI geographies. In a pending proposal that would grant favorable consideration to activities engaged in under the Department of Housing and Urban Development's Neighborhood Stabilization Program,[16] the agencies tacitly encompass program activities that cover middle-income areas. While ABA supports expansion of revitalization and stabilization to cover middle-income areas, such credit should not be restricted to particular government programs. Rather than amend the regulation to restrict it artificially to a single government program that will sunset in the near future, ABA urges the agencies to expand the revitalization and stabilization definition more broadly. The concept of supporting steps that will affect areas and neighborhoods affected by foreclosures is commendable, but adding flexibility to allow the concept to apply more broadly would do far more for disadvantaged neighborhoods than limiting it to a particular federal program with its own limited policy mandate.

[16] *Federal Register*, volume 75, number 121, Thursday, June 24, 2010, starting at p. 36016

Revitalization and stabilization of rural communities should also receive greater consideration. Most rural areas continue to have a declining population as young adults move to urban environments where they perceive greater opportunities. As a result, job retention programs, agricultural programs, and other efforts designed to encourage young adults to remain in these communities should receive consideration without demanding an LMI hurdle be met. As previously noted, the calculation of rural community income mistakes the homogeneity of local distress for middle-income comfort.

Additionally, the scope of "community services" and community development services should be broadened to recognize services for which the entire community is eligible—including, but not limited to, low and moderate income persons. Unfortunately, too often favorable CRA consideration has been limited to programs targeted to LMI individuals only. Difficulty in demonstrating income levels for individuals who benefit from a particular program can be a barrier to examiners considering the program under CRA. In other circumstances, bankers find that when an assessment area does not include LMI tracts, the chances of achieving an "outstanding" rating are virtually non-existent. Yet, even small dollar contributions can be highly beneficial for struggling neighborhoods and should be given more credence.

Another prime example of this type of obstacle is getting favorable CRA consideration for financial literacy activities. There seems to be widespread consensus that financial literacy for all people, regardless of their income, is critical to allow individuals to function appropriately in today's increasingly complex economy. However, ABA members report being constrained by examiner interpretations of the regulations and guidance about what types of financial education they can offer their communities and restricting participation to low-income persons in order to pass supervisory muster under CRA. ABA believes that all forms of *bona fide* financial literacy activities should receive favorable consideration in a CRA evaluation as a community development activity.

Effect of Evidence of Discriminatory or Other Illegal Credit Practices

CRA is not an anti-discrimination or credit practices enforcement statute and should not be used as one. Anti-discrimination is provided for in other statutes that are more effective for the purpose. The Community Reinvestment Act is designed to ensure that depository institutions extend credit to all segments of the communities where they are chartered. CRA is not an anti-discrimination statute like the Fair Housing Act (FHA) or the Equal Credit Opportunity Act (ECOA)—both of which pre-date CRA and cover far more than just insured depositories to broadly reach the full scope of their respective markets, i.e., all housing and credit. Congress has enacted numerous anti-discrimination statutes over the past several decades which more clearly address illegal discrimination. These statutes are not restricted to depository institutions and are much better tailored to stop illegal discrimination. CRA has a different mission directed at a more narrow market segment—federally insured depository institutions. On the other hand, ECOA, FHA and the Federal Trade Commission Act provide fundamentally individual protections with regard to *all* creditors or persons and provide equitable or compensatory remedies for particular injuries experienced by individuals, singly or in the aggregate. It is appropriate to combat discrimination with the right tools.

CRA Disclosures and Performance Evaluations

The CRA public evaluation process and rating system provide transparency of institution and industry performance and encourage bank responsiveness to local community needs within appropriate safety and soundness constraints. The CRA evaluation process is transparent and provides ample opportunity for interested parties to comment during the regular review of an institution's CRA performance. This is accomplished through the availability of the bank's CRA Public Evaluation, an open solicitation by regulators to the community to comment on the institution's CRA performance, and specific outreach by examiners during the bank's periodic CRA examination. The public evaluation enables the members of the community themselves to understand and compare the institutions that serve them—and to respond with their voice and their patronage.

This open process includes tens of thousands of pages published each year detailing bank performance, all of which are readily available on the Internet. In addition, the CRA regulations require every bank and savings association to maintain a CRA public file containing the institution's latest CRA Public Evaluation, a map of the community served by the institution, and any comments from the community since the last CRA examination, among other things. This file is available for review both by members of the public and examiners at any time. In fact, the CRA regulations require banks to post a lobby notice in every branch of the bank notifying the public that this resource is available. Members of the community who wish to influence a bank's rating have a readily available process to comment on any bank's record that they choose, and those comments are considered by the federal regulator responsible for evaluating that charter's performance.

Public Performance Evaluations do not need to be changed. In light of the preceding, ABA believes that the current Public Evaluations do not need further refinement. The great majority of our members tell us that the only time anyone ever asks to see one is when the examiners come into the bank to review the institution for compliance. ABA does not believe any more requirements or mandates in the Public Evaluations are necessary.

More attention needs to be given to the performance context. In 1995, when the agencies introduced the major revisions that were being adopted, one of the elements stressed as critical for understanding and evaluating CRA performance was the performance context. As defined in the regulations,[17] the performance context is an evaluation of the bank's performance in the context of local demographic data, including distribution of household income and the nature of local housing; information about opportunities for lending, investment and services in the local community; information from local community organizations; the bank's own product offerings and business strategy; and institutional capacity and constraints. ABA believes that over the past 15 years the emphasis on the performance context has subsided. Examiners need to give greater attention to performance context in evaluating a bank's CRA performance. The ability of a bank to serve its local community must be considered in light of the needs of that community, especially with the impact the recent economic downturn has had on many different communities.

[17] CRA rule section 21(b).

A perennial problem for many institutions is the availability of qualified investments. For many years, institutions – especially community banks – report that finding investments responsive to local community needs in their assessment area that satisfy CRA regulations can be challenging. With the current economy, banks report that even municipal bonds that may have qualified in the past are no longer necessarily safe and sound opportunities for meeting CRA obligations. This is another reason that the performance context becomes increasingly important, since the lack of availability of appropriate investments can often get overlooked by examiners.

The banking agencies should conduct more interagency quality assurance reviews of the CRA evaluation process. As ABA has heard repeatedly from its members, there is inconsistency across and within agencies about how CRA performance criteria, performance context, and community development definitions are applied. ABA believes that, in many instances, intended CRA flexibility is lost at the field level because examples of favorable treatment are not sufficiently shared among examiners so that they can learn from the experiences of other regions and other agencies. ABA strongly urges the banking agencies to perform regularly more quality assurance reviews of CRA Public Evaluations and to make their results publicly available so that examiners, bankers, and community organizations can all have common reference to how agencies fine-tune the evaluation process and encourage the flexibility of examiner judgment in granting CRA credit in a variety of community circumstances.

ABA also urges the agencies to conduct a special comprehensive quality assurance review of the CRA evaluation process before proposing any material amendment of the CRA rules or ratings. Such a public review would enable all stakeholders and the agencies themselves to focus on the real issues and to distinguish between flaws that are imbedded in the rules and shortcomings arising from inconsistent interpretation or application or failure to utilize available regulatory flexibility.

Conclusion

These views, while by no means a comprehensive presentation of banker views or issues that we have with CRA and its implementation, are intended to improve CRA implementation and to make it more consistent with the goal of CRA, namely to enhance the ability of banks to meet the credit needs of their local communities. Today the banking industry and America's financial regulatory system are facing the most comprehensive and far-reaching reform that any of those present at this hearing have witnessed in their lifetimes. We are less than two years removed from severe financial panic and are still coping with what some label the "Great Recession." Much is left to be done just to return our economy to a solid footing. Major reform still remains to be tackled in our housing finance markets.

Accordingly, ABA encourages the agencies to proceed cautiously when considering changes to the CRA regulatory regime, keeping in mind that every step should be designed to enhance market confidence and no step should be taken that would increase uncertainty for banks and among their customers. Thanks to past reforms we have a process that is predicated on concrete measures of performance and transparency to interested community constituents. Maintaining these established standards, rather than introducing new uncertainties, is the preferred method to gauge how our economic situation translates to true changes in our CRA performance. While greater latitude in capturing the expansive needs of rebuilding our

communities is warranted, it should be done in ways that recognize the distinctions among communities and the different ways that different banks can contribute to them. We must acknowledge that no real progress can be made without proceeding safely and soundly within the constraints of the local market.

Maintaining CRA simplicity is important for any modernization effort. Adding burdensome data reporting requirements will not materially improve an examiner's ability to evaluate a bank's record of CRA performance but will create expenses that will drain resources that could be better applied to actually supporting the community. Narrowing the definition of community development or creating hurdles to what qualifies as a community development activity, as some have suggested, will also only complicate the evaluation process and deter banks – especially community banks – from considering the full range of opportunities that may deserve their support and that would benefit local communities.

ABA appreciates the opportunity to provide our perspective and the concerns of our members. We intend to stay engaged as Congress and the agencies continue with this process. However, we end as we began our comments by stressing that serving local communities' credit needs is what the successful business of banking is all about and the measurement of that performance is what CRA should accomplish.

Thank you for the opportunity to comment. If you have any questions or need additional information about any of the points raised, please feel free to contact the undersigned.

Sincerely,

Robert G. Rowe, III
Vice President & Senior Counsel