THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy

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Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
via Email: regs.comments@federalreserve.gov
Docket No. R-1386

Robert E. Feldman
Executive Secretary, Attention: Comments
Federal Deposit Insurance Incorporation
55017th Street N.W.
Washington, D.C. 20429
via Email: Comments@FDIC.gov
RIN 3064-AD60

Office of the Comptroller of the Currency
250 E Street, S.W., Mail Stop 2-3
Washington, D.C. 20219
via Email: regs.comments@occ.treas.gov
Docket ID OCC-2010-0011

Office of Thrift Supervision
Regulation Comments, Chief Counsel's Office,
1700 G Street N.W.,
Washington, D.C. 20552
via Email: regs.comments@ots.tres.gov
Attention: OTS-2010-0019

RE: COMMUNITY REINVESTMENT ACT

Dear Sir or Madam:

The Financial Services Roundtable[1] ("Roundtable") submits this letter in response to the joint request by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $74.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

Office of Thrift Supervision (OTS), collectively ("the Agencies"), request for public comments on the regulations and procedures for assessing a financial institution's performance under the Community Reinvestment Act (CRA). The Roundtable appreciates the opportunity to share its comments with the Agencies on this important issue.

General Comments

CRA was originally enacted in 1977 to promote new loans and services to low- and moderate-income neighborhoods and consumers. Since enactment, CRA has more than achieved its goal: CRA has become an open and consultative community process with public schedules of examinations, solicitation of comments from community groups, and public examination ratings and evaluations. All CRA stakeholders, including lenders, regulators, and community organizations have become more sophisticated and focused on how best to achieve the goal of the statute. Most importantly, CRA has generated billions of dollars in new loans, investments, and services in urban and rural areas around the country. Despite this record of success, we believe there is room to refine the implementation of CRA to allow banking institutions and community groups to better achieve the goal of the Act. We respectfully request that the Agencies consider the changes recommended herein.

Geographic Coverage

The Roundtable believes that the most effective approach the Agencies can take is to acknowledge that financial institutions are not monoliths and that a "one size fits all" approach should be avoided when modernizing CRA. No two banks are alike and no two markets have identical needs, and therefore CRA-related activities may likewise differ from market-to-market and bank-to-bank. Similar to the current regulatory scheme regarding affiliates, geographic coverage and/or the definition of community should be determined by the institution on a case-by-case basis.

Community Development; CRA Disclosures and Performance Evaluations; Small Business and Consumer Lending Evaluation and Data.

The Roundtable supports strengthening performance evaluations to encourage more innovation and flexibility to allow banks to adapt their policies to meet the needs of underserved communities. However, in recent years, CRA examiners have placed an emphasis on mortgage lending, with constant pressure for individual institutions to meet, or even exceed, demographic benchmarks that have minimal validity because they do not factor in demand or risk. Secondarily, some examinations benchmark against peer performance without consideration for product type. For example, in the past a prime mortgage lender was expected to perform equally to a subprime mortgage lender.

The Roundtable recommends that the Agencies expand consideration of activities that are serving community needs but are not adequately recognized in CRA evaluations. For example, CRA credit should be accorded to reward banks for high-impact and/or innovative investments that directly respond to local government/community's needs such as helping finance a community center or critically important small business. We also believe it is important to

encourage institutions to invest in multi-geography funds because they are an efficient means of getting capital into activities that serve lower-income populations. For example, investments in multi-geography funds should receive full credit so long as the fund has one asset in the institution's assessment area. Such an approach would also facilitate infusing capital into under-banked markets. We also recommend that the Agencies encourage examiners to give institutions sufficient recognition for non-mortgage lending activities that serve lower-income populations and neighborhoods.

Small business lending, particularly with its attendant job creation, is just as pressing a need as affordable housing, especially in this current economic environment, to the strength of communities across the country. If a business model calls for more residential mortgage lending and less commercial lending, then examiners should put more emphasis on low-to-moderate income mortgages and less on small business lending. Conversely, if a business model calls more for commercial lending and less for residential mortgage lending, then more focus should be placed on small business lending.

Community development lending, which likewise can encompass affordable housing and economic development, although may be relatively low in terms of volume compared to mortgage lending, but may have significant community impact. The CRA statute itself is not focused on mortgage lending, but many types of lending in the bank's service area. We urge the Agencies to better align examinations with the bank's lending strategy specific to each loan category, *i.e.* mortgage, small business, small farm, and community development.

Finally, increasing emphasis on the quantitative *versus* the qualitative impacts CRA activities has discouraged innovation, and has undercut support for Community Development Financial Institutions (CDFI). CDFIs are incredibly important to strengthening communities and meaningful CRA credit should be given to support to them.

CRA Performance Tests, Asset Thresholds and Designations

Existing CRA regulations and interpretations encourage examiners to give extra consideration to projects and activities that are innovative, complex, or high-impact. Our members observe that such recognition is in fact rare. CRA should not stifle creativity and innovation necessary to assist low-to-moderate income consumers and neighborhoods. Too often examiners focus on simple quantitative standards regardless of whether there is under-met need, rather than the qualitative factors - and do not give sufficient credit to innovative, complex, or high-impact projects. High-impact or complex investments, loans, and services are crucial to community development, and are needed now more than ever. An example of these innovative programs include opening and maintaining homeownership preservation offices in low-and-moderate income neighborhoods.

Another program example is a bank's efforts to systematically offer and sell at deep discounts or donate properties to local community-based organizations. The Roundtable recommends that the Agencies pay greater attention to innovative, high-impact and complex loans, investments and services in conducting CRA examinations. CRA initiatives designed to meet the special needs of a community can be more effective than participation in general lending or investment

programs.

Additionally, we urge greater attention be paid to the performance context for individual banks. Within the context of CRA a simple comparison to demographic benchmarks and/or peer activity may not be the best means to measure a bank's CRA compliance. The CRA regulations already acknowledge the unique character of individual banking institutions by encouraging institutions to perform their own "performance context" assessments in advance of CRA examinations. These assessments are designed to help examiners consider a bank's: (a) unique product offerings and business strategy as determined from data provided by the bank; (b) institutional capacities and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s); and (c) past performance and the performance of similarly-situated lenders. We recommend that the Agencies encourage examiners to give sufficient attention and regard to these assessments in conducting of CRA examinations, rather than just relying upon quantitative peer comparisons and demographic benchmarks. Because examiners have broad discretion around the qualitative factors and performance context, it is essential that examiners are well-trained and well versed in all of these areas before they are sent into the field.

Affiliate Activities

The Roundtable opposes expanding CRA to other affiliates or industries such as insurance companies and securities firms. The proposed CRA-type criteria for lending, services and investments by which these affiliates/industries will be assessed do not necessarily lend themselves to the entire financial services industry. The expansion of CRA to cover certain non-bank affiliates such as insurance and securities will result in the loss of focus in meeting the credit needs of communities and lessen the local impact of CRA efforts. CRA is based in the centuries-old convenience and needs obligation inherent in banking charters. The Act describes this obligation as follows:

> "(1) [insured bank and savings associations] are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;
> (2) the convenience and needs of communities include the need for credit services as well as deposit services; and
> (3) [insured banks and savings associations] have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[2]

CRA has succeeded because it is linked to the charter obligation imposed on banking institutions. It should not be assumed that extending CRA to institutions that are not subject to a similar obligation would be successful. While mutual funds, insurance companies and brokerages have duties and other obligations to their customers, they are not subject to the same

[2] 12 U.S.C. § 2901 (1977).

type of "community convenience and needs" obligation that is part of the bank charter. Banks are unique in this regard, and CRA is based on this unique obligation.

Moreover, proposals to extend CRA beyond banking firms raise several policy questions. What would be the basis for extending CRA to firms that are not subject to the same "convenience and needs" obligation inherent in a bank charter? If CRA is extended to non- banking firms, what types of firms should be covered? Since insurance companies and brokerages do not do much lending, how will we judge their CRA performance? Both insurance companies and brokerages have limitations to investing primarily in investment grade securities, either as a prudential standard to preserve company capital or as a customer fiduciary standard. It is highly likely that these investment restrictions will pose difficulties to applying CRA to insurance companies and brokerages. There is simply no adequate basis for a broad extension of CRA to other financial services companies.

Ratings, and Incentives

Today, the overwhelming majority of banks receive a Satisfactory CRA rating, while only about 10% achieve an "Outstanding" rating. This result should not be surprising. Achieving an "Outstanding" rating requires considerable effort and expenditure on the part of banking institutions. We believe, however, that even more banking institutions should pursue this top rating. To that end, we propose that the Agencies responsible for implementing CRA institute measures to encourage banking institutions to obtain an "Outstanding" CRA rating. Specifically, we recommend that the Agencies:

- Provide some form of public recognition or acclaim for institutions that achieve an "Outstanding" rating, perhaps through the design of an official symbol or seal proclaiming an "Outstanding" CRA rating that an institution could place in bank windows and in advertisements;
- Provide a longer term between CRA examinations for all institutions that receive an "Outstanding" rating, not just those with less than $250 million in assets;
- Decline requests for public hearings on merger and acquisition applications when the acquiring institution has an "Outstanding" rating.

We believe that such incentives would increase the number of banking institutions earning an "Outstanding" CRA rating, and this would increase the flow of credit and services to low- and moderate-income consumers and neighborhoods.

Access to Banking Services

The Roundtable applauds efforts to ensure that low-to-medium consumers have access to the benefits of financial services. Starting a banking relationship is the first step toward securing an individual's financial future and can be an immediate cost-saving measure for individuals and families, many of whom rely on check-cashers and paycheck loan services that charge high fees. We are constantly looking for ways to help people use more cost-efficient, traditional financial institutions.

A low-fee checking or savings account can be mutually beneficial to financial institutions and

low-to-moderate consumers as long as transparent pricing structures are enacted across all products and features. We do note that free accounts are not always a viable option in that they do not fully cover a bank's costs of providing the accounts, the rising expense of building and maintaining distribution capabilities, paying deposit insurance assessments, and ensuring that security and fraud protection measures are in place.

Offering accounts at a fair, transparent, and predictable price allows customers to compare the products and services of different banking entities. Many of our member banks provide alternative accounts that encourage savings or waive account maintenance fees when a customer elects to use automatic funds transfer or maintains a low average daily balance. These low thresholds, combined with low minimum opening balance requirements, provide options for low-to-moderate income customers and encourage savings while balancing the needs of customers for low-cost and convenient savings accounts with a bank's safety and soundness goals. Nonetheless, given the costs and safety and soundness considerations, banks that do not offer such a product should not be penalized as part of their CRA exam.

Effect of Evidence of Discriminatory or Other Illegal Credit Practices on CRA Performance Evaluations

The Roundtable does not support discrimination in any form. The goal of CRA is to expand credit capital and create lending opportunities in every community. CRA has been successful precisely because its focus is on community development and low-to-moderate income people and neighborhoods. Presently, evidence of discrimination or credit practices that violate applicable laws, rules, or regulations adversely impact a bank's CRA performance. Given the successful implementation of CRA, now is not the time to change the focus of the regulation to address issues unrelated to community development. Broadening the scope of CRA will shift the focus away from low and moderate-income customers and neighborhoods to issues unrelated to meeting the lending needs of a bank's local community. This broadened scope could undermine the safety and soundness obligation that banks must uphold. The Roundtable believes that it is inappropriate to impose on the financial services industry special social responsibilities best met directly by government.

Coordination with other Regulators

The Roundtable encourages the Agencies to coordinate and work with other regulators when finalizing this rule. The Roundtable is concerned about the interplay between CRA (which will continue to be enforced by bank regulators) and the two offices under the newly established Consumer Financial Protection Bureau ("CFPB") that appear to have a CRA-like mission. The CFPB's Community Affairs office is expected to address "traditionally underserved consumers and communities," and the Office of Fair Lending and Equal Opportunity has responsibility for ensuring fair, equitable and nondiscriminatory access to credit "for both individuals and communities."

The Dodd-Frank Wall Street Reform Act appears to create a parallel oversight on financial institutions similar to CRA, but without any of CRA's requirements that banks operate "consistent with the safe and sound operation of such institutions." Without further clarification

and limitation, it is possible that the CFPB could encroach directly into the Agencies' jurisdiction and authority to administer the CRA. This parallel CRA-like regulatory structure could interfere with the Agencies' CRA regulatory implementation and oversight, directly impacting a bank's compliance with CRA and negatively impact its overall CRA rating. In short, the unintentional consequence of such an arrangement would lead to double reporting, confusion among banks and their respective communities, significant increases in compliance costs, and possibly inadvertent non-compliance. Thus, for these reasons, the Roundtable recommends that the regulators work together to develop a commonality, coherence, and distinct roles so as not to create any undue burden on the industry to comply with CRA.

Conclusion: CRA Works

For more than 30 years CRA has encouraged financial institutions to help meet the financial needs of consumers in their local communities. Since its inception, CRA has helped revitalize numerous communities and underserved areas around the country by increasing the level of banking services to low-to-moderate income individuals, increasing lending to small businesses, spurring job creation, and helping families obtain the money they need for quality housing.

The Roundtable respectfully urges the Agencies to avoid efforts that make implementing CRA counter-productive. Any proposed changes to current regulations should be carefully considered, pragmatic, and provide incentives to banks to continue to strive for an outstanding CRA rating. Currently, Congress is examining CRA as it considers ways to modernize the law. The Roundtable recommends that the regulators and Congress work together as not to create any undue burden on the industry to comply with CRA.

The Roundtable appreciates the opportunity to comment on CRA. Thank you in advance for considering our comments. If you have any questions, please feel free to contact me or Brian Tate of the Roundtable staff at (202) 289-4322.

Sincerely,

Richard M. Whiting

Rich Whiting
Executive Director and General Counsel