NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS

FEDERAL REGULATORY & HOUSING POLICY AREA

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Senior Staff Vice President

May 10, 2005

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

RE: RIN 1557-AB98
Community Reinvestment Act Regulations
70 FR 47 (March 11, 2005)

Dear Mr. Feldman:

On behalf of the 220,000 member firms of the National Association of Home Builders (NAHB), I appreciate the opportunity to respond to the notice of proposed rulemaking issued jointly by the Office of the Comptroller of the Currency (OCC) Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC) (collectively the Agencies) on proposed revisions (Proposal) to Community Reinvestment Act (CRA) regulations for financial institutions. The Proposal is based in part on an interagency review by the Agencies and the Office of Thrift Supervision on whether the CRA regulations remain contemporary with the evolution of the financial services marketplace.

Some of the specific changes to the CRA regulations the Agencies have proposed include: (a) changing the definition of "small bank" to raise the asset size limit from $250 million to $1 billion, regardless of holding company affiliation; (b) adding a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and, (c) expanding the definition of "community development" to encompass a broader range of activities in rural areas.

NAHB Policy on CRA

NAHB strongly supports the goal of the CRA, which is to encourage federally insured banks and thrifts to help meet the credit needs of their entire communities. Throughout the federal banking agencies' four-year review of the CRA implementing regulations, NAHB has voiced concern that gaps in the present CRA regulatory framework perpetuate the chronic

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problem where some socio-economic sectors of the country have less than satisfactory access to the financial services system.[1]

NAHB also has consistently opposed banking agency efforts to impose less rigorous compliance procedures on financial institutions if those procedures result in a de facto diminution in an institution's obligation to provide basic financial services to those in need.

Small Bank Definition

NAHB opposes the Agencies' proposal to change the definition of "small bank" by raising the asset size ceiling to $1 billion because it would reduce the obligation to offer a diversified array of CRA activities by a larger number of financial institutions. Even though the Agencies also propose to impose a community development test on banks at the upper end of the proposed small bank asset size range, the small bank CRA examination entails a much less comprehensive review than large banks undergo. Large banks are evaluated on a three-part test of how they lend, invest and provide services in their communities. The lending component of the large bank test rates the bank's CRA compliance for each type of loan product offered. Factors considered include the distribution of lending activity in the institution's portfolio across various socio-economic segments and the actual versus potential loan penetration rate for each loan category.

The lending component of the "small" bank CRA test is much less thorough because it merely evaluates the bank's total loan-to-deposit ratio, and the proportion of loans made within, or outside of the bank's assessment area. Small banks also are spared the community service and investment tests bigger banks must pass.

NAHB believes that by quadrupling the asset-size criteria to qualify for the small-bank CRA exam, the Agencies' Proposal would result in an excessive reduction in the level of scrutiny for CRA compliance for an expanded range of financial institutions. This, in turn, reduces the level of accountability and incentive for those institutions to meet or exceed their CRA obligations.

The Agencies also seek comment on whether the asset size ceiling for small banks should be adjusted periodically based on a measure of the rate of inflation, such as the Consumer Price Index. NAHB opposes this provision of the Proposal. NAHB suggests that it is entirely feasible that the rate of inflation could outpace the rate of increase in asset size for financial institutions. In this scenario, a disproportionate number of financial institutions would qualify for the less comprehensive small bank CRA examination. In addition, NAHB believes such a process for ongoing changes to the Agencies' CRA regulations does not satisfy the Administrative Procedure Act's requirements for providing public notice and the opportunity to comment.

[1] See NAHB Comment Letters dated October 17, 2001, April 6, 2004 and October 19, 2004.

Community Development Test for Intermediate Small Banks

The Agencies have attempted to dilute the stark contrast between the small bank and large bank examinations by creating a community development test for “intermediate small” banks, i.e. those with assets between $250 million and $1 billion.

According to the Proposal, the community development test for “intermediate small” banks would result in a single CRA score for all community development loans, investments and services that satisfy the regulatory “community development” criteria. The Agencies propose granting “intermediate small” banks a high degree of flexibility in meeting the community development test. For example, unlike large banks, the community development activities of “intermediate small” banks would qualify for CRA credit even if the activities are not innovative, complex or new.

NAHB does not feel this approach will be an effective offset to the relaxation of CRA requirements for a larger number of institutions. NAHB believes the Proposal gives banks in the range of $250 million to $1 billion in assets too much leeway in their CRA obligations. Consolidating all community development loans, activities and investments into a single CRA rating could result in a bank focusing exclusively on passive investments at the expense of traditional lending activities. Moreover, the proposal could foster complacency because so-called “intermediate small” banks would no longer be obligated to search for innovative, complex or new community development activities.

Community Development Lending, Investment and Service Activities

NAHB appreciates the Agencies’ attempt to expand the reach of CRA’s benefits by permitting activities in rural areas to qualify for CRA credit. The Agencies’ proposed modification to the community development definition is a welcome adjustment that simultaneously assists financial institutions in meeting their CRA obligations and adds a new class of beneficiaries. NAHB members can attest first-hand that many rural communities continue to be overlooked and do not receive adequate levels of financial services.

Current regulations permit financial institutions to receive CRA credit only for activities in low- or moderate-income geographies. NAHB has long held that this income-specific measure for whether a particular community merits targeting for CRA purposes precludes the use of other equally valid benchmarks for defining underserved areas. Under the Agencies’ proposal, many projects intended to revitalize or stabilize rural communities would receive the CRA credit they deserve.

Assessment Areas

NAHB believes it is unfortunate that the Proposal does not address the systemic flaw that presently exists in defining an institution’s assessment area for CRA purposes. Currently, an individual institution is permitted to define its own assessment areas and, even though institutions are not permitted to arbitrarily exclude low- or moderate-income communities from their assessment areas, the very real possibility exists that some underserved areas are not included in any financial institution's assessment area.

NAHB members cite recent instances where several banks in proximity to an underserved community declined to finance proposed housing projects because that community was not considered to be in their CRA assessment areas. This anecdotal evidence suggests that many segments of this country have not benefited from advances in the operational, competitive, and legal structure of the financial services sector. NAHB requests that the FDIC, in concert with the other federal banking agencies, address this situation by overlaying the assessment areas of all financial institutions in order to ensure that no geographic segments are excluded from the consolidated CRA assessment area of the entire financial services system. NAHB further suggests that the FDIC amend the Proposal so that there are incentives for financial institutions to define their assessment areas in a manner representative of the locations of business and household customers in nearby geographic areas consisting of rural and other underserved areas.

In the interagency Notice of Proposed Rulemaking published in the Federal Register on February 6, 2004, the Agencies expressed a commitment to issue clarifying guidance on when community development activities outside of assessment areas will be weighted as heavily as activities inside of assessment areas. NAHB appreciates the efforts of the Agencies to encourage financial institutions to look beyond their CRA assessment areas for lending and investment opportunities. NAHB requests that the Agencies clarify this issue in a way that provides meaningful incentives for financial institutions to serve rural and other underserved areas.

<u>Conclusion</u>

NAHB endorses efforts to ensure that the CRA implementing regulations continue to channel the resources of financial institutions to underserved areas. NAHB hopes that you will adopt our recommendations to enhance the Proposal. Thank you again for the opportunity to comment. NAHB is available to answer any questions you may have concerning this statement or to provide any additional information that may be needed.

Sincerely,

David Crowe

David A. Crowe
Senior Staff Vice President
Federal Regulatory and Housing Policy Area