May 10, 2005

BY EMAIL (Comments@FDIC.gov)
AND COURIER
Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: RIN 3064-AC89 Proposed Community Reinvestment Act regulations

Dear Mr. Feldman:

Thank you for the opportunity to comment on the proposed amendments to the Community Reinvestment Act regulations.

Founded in 1927, the National Bankers Association represents the interests of minority and women-owned financial institutions. Our member banks are located in 29 states and 2 territories, serving mainly distressed communities plagued by severe social and economic problems. Our members are deeply committed to providing employment opportunities, entrepreneurial capital and economic revitalization in neighborhoods that often have little or no access to alternative financial services.

For our member banks, service to their communities, which typically consist of low and moderate-income neighborhoods, is the essential reason that they exist. The Community Reinvestment Act serves a noble goal, for it encourages banks and savings institutions that do not have the same commitment that our members have to serve the credit needs of low and moderate-income neighborhoods to make that commitment. NBA supported CRA's enactment and implementation.

At the same time, however, there have been occasions where technical regulations or technical interpretations of regulations by the agencies and the examiners in the field have caused some of our members significant administrative burdens and costs.

The costs of complying with the large bank tests have been burdensome for our members whose assets exceed $250 million. Other trade groups have quantified these costs, but suffice it to say that they are significant and detract from the central mission of our members to make direct loans to members of the low and moderate-income neighborhoods in their communities. We commend the FDIC, Federal Reserve Board ("Fed"), and the Office of the Comptroller of the Currency ("OCC") in their efforts to streamline the technical requirements of the CRA regulations so that our members can focus on serving the credit needs of their communities through direct lending rather than on the administrative technicalities that can consume our members' vital time and resources.

The FDIC proposes to create a new category of small banks ("intermediate small banks") with assets of from $250 million to $1 billion. The proposal would add a new community development test that would be separately rated in CRA examinations of these intermediate small banks, in addition to the streamlined small bank lending test. An intermediate small bank would not be eligible for an overall rating of "satisfactory" unless it received ratings of "satisfactory" on both the lending and community development tests.

This proposal differs significantly from the proposal that FDIC published in August 2004, which would have added a community development criterion as part of the overall evaluation of such institutions' small bank lending efforts. Unfortunately, this new proposal is a step backward, and fails to recognize that a community bank's traditional strengths in meeting the credit needs of the community are through making direct loans to those who reside and work in their community. Giving equal weight to a community development test will likely divert many community banks from what they do best to activities and investments that often require a higher degree of expertise and specialization than many community banks possess.

One of the components of the community development test is the "investment test," which applies to banks with assets of $250 million or more under the current regulation. The investment test "evaluates a bank's record of helping to meet the credit needs of its assessment areas through qualified investments." Qualified investments do not include direct loans to individuals and business located in the low to moderate-income community. The performance criteria that the FDIC applies to evaluate the investment performance of a bank includes "the innovativeness or complexity of qualified investments" and "the degree to which the qualified investments are not routinely provided by private investors." Many of our member banks, like many community banks, have the resources and expertise to make direct loans to benefit their communities, but generally the only kinds of investments that they are qualified to make are investment securities such as U.S. Treasuries, U.S. agency bonds, and municipal bonds. Most of our member banks that have assets of $250 million or more would do a better job of serving the credit needs of their communities by being allowed to devote their resources and available funds to make direct loans to their constituencies rather than invest in complex and innovative investments marketed by large Wall Street investment firms that some of our members may not fully understand and which carry large expenses and profit margins passed on to those Wall Street firms.

The second component in the proposed community development test is "community development loans." One of our concerns relates to the somewhat restrictive definition of "community development loans" in the current regulation, which the FDIC has not proposed to amend. The current regulations exclude home mortgage, small business, small farm, or consumer loans "reported or collected" by banks "for consideration in the banks' assessment."

This exclusion appears to exclude all such loans from being counted in evaluating the proposed "community development test." By having a separate evaluation of "community development loans" for these intermediate small banks as part of the community development test, the regulations will divert our members' efforts from doing what they do well – making direct loans to the individuals and businesses in the community – to doing what they may not do so well, underwriting the more complex and potentially riskier community development loans.

The third component, "community development services," is the only component in the proposed community development test that our members and many other community banks are well equipped to meet. These are bank services intended primarily to benefit low- and moderate-income people, such as low-cost bank accounts and banking services such as low-cost remittance services. However, this criterion is only one of three (or four if you count "the bank's responsiveness through such activities to community development lending, investment, and services needs."

The prefatory material to the Proposal states that

> The number and amount of community development loans, the number and amount of qualified investments, and the provision of community development services, by an intermediate small bank, and the bank's responsiveness through such activities…would be evaluated in the context of the bank's capacities, business strategy, the needs of the relevant community, and the number and types of opportunities for community development activities. The federal banking agencies intend that the proposed community development test would be applied flexibly to permit a bank to apply its resources strategically to the types of community development activities (loans, investments, and services) that are most responsive to helping to meet the community needs, even when those activities are not necessarily innovative, complex, or new.

This provides some comfort to our members that if the agencies were to adopt a community development test, it would be applied with flexibility and with consideration of a community bank's limited resources and capacities. However, many of the communities that our members serve are in dire need of all of the community development activities, but our members, through insufficient resources or expertise, cannot meet all of those needs. The language in the prefatory material and in Appendix A recognizes that a bank's "capacity" may limit the community development activities in which it engages, but it also puts a greater burden on our banks by stating that the adequacy of a bank's response will depend also on its assessment area's need for such community development activities and the availability of such opportunities for community development in the bank's assessment areas(s).

The language should state that a bank's capacity will limit the extent and type of community development activities in which it may engage, regardless of the need of and opportunity for community development in its assessment area.

We also note that under the existing small bank performance standards, the FDIC, Fed, and OCC already consider community development loans and qualified investments. This provision makes the proposal to create an entirely separately evaluated "community development" test unnecessary. To separate the narrower community development test from the overall CRA effort may effectively debase the value placed on a bank's efforts to make traditional loans to residents of and businesses in the low and moderate-income neighborhoods. However, it is the traditional loans to such constituencies that are essential to the well being of the neighborhoods. It is also the kind of credit that our members generally are able to provide within the limited resources available to them.

If the FDIC, Fed, and OCC decide to adopt the "community development test," NBA has two additional suggestions.

First, we suggest that institutions with assets between $250 million and $500 million be excluded from the "community development test" since the existing rules already incorporate, as part of the small bank performance standards, a community development component. Banks of this size typically will not have the expertise to make the kind of investments that is conjured up by reference to "community development loans" or investments.

Second, we suggest that the FDIC, Fed, and OCC make absolutely clear in their amended rule that for purposes of applying the "community development test," banks may balance their community development lending, investing and service activities based on the opportunities in the market and the banks' own strategic strengths, and that banks may perform well under the community development test by engaging in one or more as opposed to all of the activities. The amended rule should also clarify that a needy community will not require a bank serving that community to do any more than its capacity, in its reasonable judgment, allows it to do.

In addition to the comments discussed above, we request that in the context of broadening the ambit of community development activities, the FDIC consider explicitly addressing the role played by financial intermediaries such as Community Development Financial Institutions ("CDFIs"), Community Development Corporations ("CDCs") and minority- and women-owned financial institutions in the CRA regime.

More specifically, the FDIC, Fed, and OCC should consider amending the definition of "qualified investment" in their regulations to clarify that a "qualified investment" would include, without limitation, an investment, grant, deposit or shares in or to: (1) financial intermediaries (including, (1) CDFIs; (2) CDCs; (3) minority- and women-owned financial institutions; (4) community loan funds and (5) low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development (collectively, the "Qualified Financial Intermediaries"). Furthermore, the FDIC, Fed, and OCC also should consider amending the definition of "community development loan" in regulations to clarify that a "community development loan" would include, without limitation, a loan to a Qualified Financial Intermediary.

We understand that by amending the CRA regulations as outlined above, the FDIC, Fed, and OCC would only be expressly including provisions that have already been highlighted in the Interagency Questions and Answers Regarding Community Reinvestment ("Interagency Questions and Answers"). See 66 FR 36620 (July 12, 2001). Nevertheless, an explicit reference to Qualified Financial Intermediaries in the CRA regulations would have the force of law and would otherwise be desirable for a number of reasons. First, such an amendment would be consistent with the spirit of the CRA regulatory scheme of encouraging insured banks and thrifts to help meet the credit needs of low-income communities. Second, it would be in keeping with the steps historically taken by the FDIC, Fed, and OCC to preserve and encourage minority ownership of insured financial institutions.

An explicit reference in the CRA regulations to minority-owned financial institutions would be a strong tool for minority-owned financial institutions in their efforts to solicit capital investments from larger financial and non-bank institutions.

Finally, we wish to express our concern with the proposed regulations that provide that the agencies' evaluation of a bank's CRA performance is adversely affected by "evidence" of discriminatory or other illegal credit practices. It violates fundamental principles of fairness and due process to consider "evidence" of such credit practices in a CRA assessment without such evidence clearly proving a violation. The proposed regulations create a highly subjective standard that is unworkable and may lead to unfair treatment of a bank.

Sincerely,

Norma Alexander Hart
President