

October 26, 2001

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

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ATTN: Docket No. 2001-49

VIA E-mail: [www.regs.comments@ots.treas.gov](http://www.regs.comments@ots.treas.gov)

Re: Advance Notice of Proposed Rulemaking on the Community  
Reinvestment Act Regulations published July 19, 2001.

Dear Sirs:

We respectfully submit the following comments regarding the current Community Reinvestment Act regulations on behalf of the banks and banking industry in Utah in response to the request for comments in the Advance Notice of Proposed Rulemaking on the Community Reinvestment Act Regulations jointly published by the federal banking agencies in the Federal Register on July 19, 2001.

***STATEMENT OF INTEREST***

This letter is submitted on behalf of the bank members of the Utah Bankers Association ("UBA"). UBA is a trade association that has represented the banking industry in Utah since 1910. Its members include national banks, Utah chartered banks, savings banks and FDIC insured industrial banks. All UBA member banks currently have satisfactory or outstanding CRA ratings.

***PRELIMINARY STATEMENT***

Utah bankers have always recognized the importance of the products and services they provide to the health and vitality of the communities where they live and work. Access to adequate financial resources is necessary for a community or a group of people to thrive. In return, a thriving community produces the best opportunities for a bank to grow and thrive. Diligently serving the needs of the whole community results in a virtuous cycle of increasing deposits, loan demand, and needs for other financial products and services, which enables the bank to grow and support further economic development in the community. That represents community reinvestment in its purest form and essentially describes the history of banking in this nation. We believe this virtuous cycle of banks supporting communities and communities supporting banks has played a fundamental role in the economic development of this nation. Regardless of changes in the marketplace and the economy in the future, one thing that will never change is the primary importance of ensuring that every community has access to the economic resources it needs to

develop properly.

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Before addressing specific subjects, we would like to review the overall purpose and goals of CRA to provide a framework for the comments that follow. The Community Reinvestment Act in effect today was initially designed to stop the practice of redlining. Community and government leaders realized that redlining produced a vicious cycle that only exacerbated the economic problems in those areas. They wanted to ensure that creditworthy borrowers could obtain loans and other resources needed to help rebuild those areas. The intent was not to make the banks responsible for rehabilitating those areas. Banks were only prohibited from denying a loan because of the area in which the loan proceeds would be used. We believe that is a good and necessary program.

The concern most often expressed regarding CRA is the tendency to require more than programs to ensure that a bank is serving the needs of all creditworthy borrowers in its community. A bank's primary role and responsibility is to provide a safe place to deposit money and to lend those funds back into the community.

The banks also believe it is bad public policy to have a process for enforcement that encourages outside groups to make exaggerated and highly publicized attacks on individual banks and the banking industry generally as a means to extort funds and services for new programs. Every application filed by a bank with a regulator is an opportunity for self appointed community advocates to attack the applicant's record of serving the needs of the community for the purpose of forcing the bank to commit additional funds for loan programs or investments. There is no reward in this process for a community group to compliment and support a bank's record of community lending. On the contrary, the louder and more exaggerated the protest is, the more likely the bank will be forced to buy the silence of the protesters. This has only served as an incentive to exaggerate and intensify criticism of the industry, unfairly disparage the image of the industry in the eyes of the public, and damage relationships between banks and responsible community representatives. We believe a better way should be developed for the public to contact regulators with comments and legitimate complaints about the lending practices of a particular institution.

### ***SUMMARY OF RECOMMENDATIONS***

Our specific recommendations include the following:

- Make the lending test more flexible.
- Under the small bank and large bank tests, do not require community development investments and services to get a satisfactory rating under the lending test. Count investments and services for extra credit or as a substitute for loans.
- Broaden the scope of community development investments and service to include programs designed to benefit the community as a whole, not just low to moderate income communities.
- Make it easier to qualify as a limited purpose institution.
- Make it easier to apply for and modify a strategic plan.

- Continue to define the primary assessment area as a geographical area adjacent to the bank's main and retail branch offices and do not include any areas where the bank has no presence.

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- Discontinue CRA reporting of small business loans. Reports are of little value and extremely costly. Resources and money allocated towards these reports could be put back into the community.

### **RECOMMENDATIONS**

**1. The lending test should be made more flexible and less reliant on quantitative measures.**

CRA exams currently place too much emphasis on the quantity of CRA qualifying loans and loan distribution patterns. Many of our bank members say they feel pressured to make loans they otherwise would not because of credit quality and other risks in order to continue growing the bank's portfolio of CRA qualifying loans and investments. It is important for examiners not to push banks into programs that are not safe and sound.

We believe the first step in a CRA exam should be to review the efforts the bank has made to ascertain the credit needs of its assessment area, the programs it has designed to serve those needs, and the economic and demographic characteristics of the assessment area. Quantitative goals would be appropriate if they are based on the specific circumstances of each bank and assessment area at that point in time. If needs have changed, a bank should not be penalized if its CRA programs change in response, particularly if the unmet needs of the community decline.

Some quantitative tests currently applied are arbitrary and should be terminated. For example, there are many valid reasons why a bank's market penetration would not be equal in every neighborhood in its assessment area. There should be no penalty as long as the bank is not intentionally excluding lower income areas and is making good faith efforts to understand and serve the needs of every area.

Another problem that has developed over the past few years is increasingly detailed and restrictive standards for determining what loans and investments qualify for CRA purposes. We appreciate the desire of the regulators to make the process as objective as possible. However, we believe there must be some room for discretion to judge the merits of particular programs. The industry is just too diverse and complex for a single rule to determine the merits of a particular loan or program regardless of its context.

**2. Small and Large banks assessed on a lending test should not be required to make investments and provide services to get a satisfactory rating.**

CRA is primarily a program to ensure that each bank is serving the needs of creditworthy borrowers in all the areas in its assessment area. That should be the focus of the examiners conducting a CRA exam of a bank subject to a lending test. If the bank is fulfilling its duties and responsibilities in that area, it should not be denied a satisfactory rating if it is also not making community development investments.

Many banks and their affiliates are actively involved in community development programs without being compelled to do so by regulators. In fact, banks have traditionally been among the most philanthropic members of the business community. It is not objectionable to allow a bank to make a community development investment in order to get extra credit beyond its lending activities, or as a substitute for loans. We fully

support that. What our members object to is a quota of investments that preclude a satisfactory CRA rating if the quota is not met regardless of the bank's record of meeting the credit needs of the community through loan programs.

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**3. The scope of community development investments and services should be broadened.**

In addition to making community development investments optional for small and large banks, the scope of qualifying investments should be expanded. With a few exceptions, current guidelines do not permit an investment to count unless it is targeted primarily or exclusively at low to moderate income individuals or neighborhoods. That is both unfortunate and arbitrary. Programs to support job training, job creation and education usually do not qualify if they benefit the community as a whole, including low to moderate income persons.

Education is a good example. Programs to teach basic financial skills are not provided in many schools. This may be for lack of funds. If a bank is willing to provide teaching resources or fund that education, it is addressing the schools' financial needs as well as the students'. The mere fact that some of the students do not qualify as low or moderate income should not disqualify that type of program.

We do not believe expanding the standards for qualifying community development investments would be inconsistent with the goals of the CRA act and regulations. For those subject to the lending test, a community development investment should be counted for added credit because it benefits the community beyond the bank's loan programs and basic business. It builds good will in the community and represents an effort beyond achieving the bank's basic business goals. In that context, there is no reason to limit qualifying investments to the degree reflected in the current guidelines.

Banks such as limited purpose institutions that are primarily assessed on the basis of community investments should also be able to count a broader range of investments for CRA purposes. Those banks are not assessed on the basis of loans in their assessment areas because they make very few loans there. Community development investments are the best way for those institutions to help serve the unmet needs of their assessment area. But there are fewer opportunities to invest in programs that only help low to moderate income individuals with any prospect of a real investment return. We would recommend counting any community development investment for CRA purposes that benefits the community as a whole including low to moderate income individuals, or permitting those investments to count for added credit after a limited purpose bank has made a satisfactory level of investments in community development programs that are targeted exclusively at low to moderate income individuals.

**4. ~~Standards for a limited purpose bank and its CRA assessment test should be more flexible.~~**

During the past several years, new technology caused the nation's financial markets and institutions to develop at a hyper accelerated rate. To properly regulate the new kinds of financial institutions that have emerged during this period, regulators must first understand the unique features of each institution and its products. Only then should regulators decide how to best measure its commitment to CRA programs and its efforts to fulfill those duties to its community.

The different categories of financial institutions included in the current CRA regulations is a good start in providing the flexibility needed to properly assess the CRA programs of various kinds of banks and other

financial institutions. For example, a traditional commercial bank usually provides a full range of products and services to all of the residents of a particular geographic area. The lending test is best suited to evaluate that institution's efforts to meet the credit needs of its assessment area.

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Other kinds of institutions need a different kind of test. Industrial banks and other institutions offering a limited number of products and services to select customer groups across the nation usually do very little lending in their assessment areas. In a recent survey, Utah industrial banks reported that they do less than one percent of total lending in their primary assessment areas. This makes it very difficult to assess the bank's general lending patterns by looking at its assessment area. At the same time, it is not possible to assess the bank's efforts to identify and serve credit needs in areas outside its assessment area because most industrial banks are "branchless" institutions with no knowledge of the areas where most of its customers reside. The selective nature of the bank's primary credit products may also preclude assessment based solely on loan dispersion patterns. For these institutions, a community development test applied to the bank's local assessment area is a much more feasible way to ensure that the bank is serving the needs of its local community.

Our members believe that CRA regulations would be more fairly and effectively applied if the regulators had more flexibility to assign each financial institution to the CRA assessment category that best fits its structure and business. Current CRA guidelines severely limit the number of banks that qualify as limited purpose even if the bank has no branches and only offers a single product to a select nationwide customer group. Under the current guidelines, an institution can qualify as limited purpose only if it offers consumer credit cards or car loans exclusively. Nothing we are aware of in the applicable laws and regulations authorizes this limitation on permitted products and services.

We believe the applicable laws and regulations were designed to permit many more institutions to qualify as limited purpose. The primary reason for providing different classes of institutions is to provide for different ways to assess CRA compliance that are compatible with each bank's particular operations. The *severe limitation of the limited purpose category defeats this purpose*. We recommend removing all references to specific products and services from the limited purpose category and allowing examiners to assign each institution to the category that best describes its structure and business.

##### **5. Standards to qualify for a strategic plan should be made more flexible.**

Most of our members have said that they do not consider a strategic plan a viable option because it requires too much work, is often denied even if a bank makes the effort, and can be a problem if circumstances change and plan goals cannot be met. We believe this category can provide a valuable option but it must become more flexible and less burdensome before any number of banks will pursue it.

Again, the modern financial markets are much more diverse than they were a few years ago in terms of new products and services, new delivery systems, and new institutions to provide those products and services. Today, even a traditional bank is much more likely to have an opportunity to design a uniquely beneficial CRA program, or find that it must devise a different test to deal with unique circumstances. The strategic plan is the safety valve for the institutions that don't readily fit into one of the other categories. However, in practice the value of this option is minimal due to the difficult application process. It has also been a problem for some institutions that devised a performance standard that turned out to be unattainable due to external changes over which the bank had no control. A streamlined process to amend an existing plan would help resolve that problem.

A strategic plan should not be mandatory unless it becomes much easier to develop and amend. It is also not clear what institutions would be required to devise a strategic plan. That should be left to the discretion of the institution taking into account its own unique circumstances and its compliance examiners.

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**6. The current standards should be retained for primary assessment areas.**

Our members believe that the current standards for primary assessment areas work better than any other options. Under these standards, the bank's primary assessment area is its local community. That is where the bank can make the biggest difference and provide the greatest benefits.

A bank needs a substantial local presence to properly understand the needs of a particular community and the opportunities available to serve those needs. Expanding or shifting assessment areas to places where bank customers reside but where the bank has no presence or means to conduct its own assessment of local community needs would be very counterproductive. It is simply not feasible to devise and implement a workable CRA plan in those circumstances.

**7. Certain reporting requirements should be eliminated.**

The requirement to collect and report data on small business lending should be eliminated. Our banks strongly believe that this requirement is too costly and the information is of little or no value. Resources could be better spent serving community needs rather than producing report.

Our members also strongly object to current guidelines that disallow loans that should qualify for CRA purposes if they are made in areas where the bank does not compile certain information. The lack of that information does not diminish the intent and effect of the loan. It is unfair and unreasonable to ignore those qualities merely because the bank finds it impractical or prohibitively expensive to collect that data in an outlying market area for the bank.

In closing, we appreciate the opportunity to submit these comments. Our members consider CRA a critically important program for the banks and the communities they serve. We look forward to working with the regulators to ensure that all of the communities in Utah are fully served by the banks in this state.

Sincerely,

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Howard M. Headlee  
President