

Testimony of

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On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Good morning. I am Marie M. Bibbs. I have been employed in the community development industry since 1977 and in banking for over 20 years. Currently, I am employed as Executive Vice President for Community Development with City First Bank of DC where I also serve as the Community Reinvestment Act Officer. City First is a dedicated community development bank serving low- and moderate-income communities in Washington, DC and the nearby suburbs. City First is a local leader in community development lending with assets in excess of \$100 million and we also manage a very robust New Markets Tax Credit program with assets of over \$174 million. We specialize in financing community facilities, the development of affordable housing, and small business financing.

I am pleased to be here today to present views of the American Bankers Association (ABA) on the Community Reinvestment Act (CRA), enacted by Congress more than 30 years ago. 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 two million employees.

ABA believes that the banking industry has established a strong record of compliance with the spirit and letter of the Community Reinvestment Act because serving our communities is what banks do and it is why we as bankers chose careers in banking. Compliance with CRA is more than just a regulatory requirement – it creates opportunity for banks to strengthen and build their communities while expanding business opportunities for the bank. It has facilitated communication and a better understanding of the perspectives and appreciation for the constraints of each sector in a local community. The evolution of the CRA compliance process has not been without difficulties but it has been improved.

Today, we would like to review the changes that have taken place as CRA has evolved and also suggest additional changes that will further strengthen CRA. For today's hearing, we will emphasize community development, ratings and incentives, and the effect of evidence of discriminatory practices on CRA performance evaluations. In my testimony today, I will cover the following points:

- The banking agencies' implementation of the Community Reinvestment Act demonstrates bankers' successful record of serving their entire community.
- The CRA public evaluation process and rating system provides appropriate transparency of institution and industry performance and encourages bank responsiveness to local community needs.
- The CRA regulations can be improved by expanding the scope of activities that qualify as community development and by permitting sufficient exam flexibility to count such activities favorably as CRA performance.
- The CRA is not an anti-discrimination or credit practices enforcement statute and should not be used as one. There are other statutes that are more effective tools to address discriminatory practices.

I. 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 of CRA that access to credit must be predicated on safe and sound operations since we have seen time and again how imprudent banking practices can result in bad lending that ultimately harms the local

community. Observing this principle is what assures regulators, banks and the public that properly underwritten CRA loans strengthen our communities—not undermine them.

CRA was created in 1977, but by the early 1990s there was almost unanimous dissatisfaction with the CRA regulatory process. This dissatisfaction on the part of bankers, borrowers, community organizations and regulators led to important changes in the regulatory requirements under CRA and to the examination process itself in 1995. The post-1995 CRA examination process reflects banks' contributions to their communities far better than the old examination procedures. By differentiating between large banks and small banks, the regulations have balanced documentation and reporting requirements with measurement of performance. Now, more than 88 percent of the banking assets of the nation fall under the more detailed large-bank examination procedures. Small banks, which constitute over 90 percent of banks, are spared some reporting burdens that are unnecessary to evaluating their commitment and service to their communities. These small banks hold only 12 percent of industry assets.

CRA compliance is strong: 99 percent of banks and savings associations receive composite CRA ratings of Satisfactory or better. This is succinct evidence that CRA today better reflects banks' success in serving the credit needs of their local communities. Banks, particularly small institutions, 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 entire community do not prosper. It is, therefore, not surprising that the banking industry succeeds at satisfying

community credit needs. In fact, Governor Betsy Duke of the Federal Reserve recently noted that, “The fate of banks is deeply intertwined with that of the cities and regions they serve.”¹

II. The CRA public evaluation process and rating system provides appropriate transparency of institution and industry performance and encourages bank responsiveness to local community needs within appropriate safety and soundness constraints.

The fact that you can read about my bank’s performance and the performance of every bank in this country is no small feat. The CRA evaluation process is transparent, with significant 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 value of public CRA evaluations in documenting an institution’s lending to its community is that it offers to the bank and its Board of Directors an opportunity to either bask in its accomplishments or face significant community and reputational risk. 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

¹*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>

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 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.

A bedrock principle upon which CRA is based is that it inextricably links the law's purpose of helping meet community credit needs with operational safety and soundness of an institution. As Governor Duke pointed out, "Too much credit leads to underwriting mistakes and mispricing of risks, as well as an overheated economy. Too little credit can choke an economy."² In other words, it is critical to find the right balance. We do our communities a disservice if we do not remember the critical role that safety and soundness play in the context of CRA.

As we emerge from the recent financial crisis and attack the lingering economic challenges that face communities across the country, banks will be constrained by their environment – both internal and external. As Governor Duke noted in her recent speech on the credit environment, credit is determined by four conditions:

- the overall condition of the banking system and its capacity for lending
- the regulatory environment that will either constrain or limit the capacity and the confidence of banks to lend to businesses and consumers

² Ibid.

- the financial condition of borrowers – especially their appetite for debt and their capacity, and
- an overarching factor - the strength of the economy, which will influence both the willingness to lend and the desire to borrow.

These four factors are the real drivers of borrowing and lending, and it is within this context that CRA must be measured.

III. The CRA regulations can be improved by expanding the scope of activities that qualify as community development and permitting sufficient exam flexibility to favorably count 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 a view of appropriate “community development” activities since Congressional findings determined that the nature of a bank’s affirmative obligation was “to help meet the credit needs of the local communities in which they are chartered.” Note 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...,” 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. According to the frequently-asked-questions (FAQs) issued by the agencies, 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.³ However, examiners are not always as flexible as the FAQs. More important, it is not always an easy matter for a depository institution to demonstrate that an area or individual is low- and moderate-income, but unless that fact can be easily proven, examiners are reluctant to grant credit for the project. As a result, many activities that might benefit the community as a whole are lost.

One of the additions in the last set of regulatory changes in 2005 was to include favorable CRA consideration for activities that benefit disaster areas and under-served areas. ABA supported this expansion of the definition. The agencies often encourage depositories to work with consumers and communities affected by natural disasters. 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 mandated to record performance in a

³ CRA Questions and Answers, section .12(g)-1 and .12(g)-2.

bank's entire community—not forgetting LMI areas, but not ignoring any other neighborhood or community segment either.

To recognize better efforts by banks to develop their entire communities, the definition, interpretation and application of “community development” should be expanded. 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. Although 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. A narrow definition should not be allowed to undermine or discourage activities that benefit the broader community. 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 to at least include activities that benefit middle-income geographies as well as low- and moderate-income persons.

The agencies seem to understand the need to alleviate this limitation. 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,⁴ the agencies tacitly encompass program activities that cover middle-income areas. While ABA supports expansion of revitalization and stabilization to cover such middle-income areas, such credit should not be restricted to particular government programs. Rather than amend the regulation to add a single government program that will sunset in the near future, ABA urges the agencies to expand the revitalization and stabilization definition more broadly. In this way, the HUD Neighborhood Stabilization Program can then qualify for CRA credit on its own merits as an instance of the more general rule.

Second, the scope of "community services" and community development services should be broadened to recognize services for which the entire community is eligible—including low and moderate income persons. Unfortunately, too often favorable CRA consideration has been limited to programs targeted to LMI individuals only. A 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 consumers, 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.

⁴ *Federal Register*, volume 75, number 121, Thursday, June 24, 2010, starting at p. 36016

We believe that as these hearings progress and other areas of CRA performance are considered, additional suggestions will arise that should be considered to capture more accurately a bank's true contribution to the development of its local communities.

IV. CRA is not an anti-discrimination or credit practices enforcement statute and should not be used as one.

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 against *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.

Conclusion

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 crisis and are still digging

out of what is labeled 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.

The statutory and regulatory reforms that are taking place and that will take place in the coming months and years – including those that Congress has yet to address – are likely to greatly affect credit markets and credit availability. Accordingly, ABA encourages the agencies to proceed cautiously when considering changes to the CRA regulatory regime. 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 and that what we achieve must be tailored to the context in which each bank is expected to perform.

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 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 at this hearing. We intend to stay engaged as the agencies continue with these hearings. And, at the end of the process, we will file comprehensive comments that address the many issues that have been raised and will be raised.