NDBA
NORTH DAKOTA
BANKERS ASSOCIATION

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

Attention: No. 2004-04

The North Dakota Bankers Association (NDBA) appreciates this opportunity to comment on the proposed amendments to the CRA regulations. NDBA is a financial institution trade association. Its 98 members are commercial banks and federal savings associations which offer a full range of banking services to North Dakota's citizens through offices and branch facilities throughout the state. NDBA member financial institutions have always had serious regard for their obligations to serve local community credit needs. This was true before the Community Reinvestment Act was adopted in 1977 and has been demonstrated many times by the CRA ratings which North Dakota institutions receive.

SMALL INSTITUTION EXEMPTION

Given the record of our member institutions and the industry in general, NDBA heartily endorses the federal bank regulatory agencies' proposal to increase the asset level at which an institution qualifies as a "small institution" and to eliminate affiliation with a holding company as a consideration for eligibility for the small institution exemption. The adoption of the small institution exemption from service and investment tests in 1995 substantially improved CRA because it allowed eligible institutions and examiners to refocus the CRA process on the bank's record of satisfying a community's credit needs, rather than devoting ever more resources to documentation, compliance with detailed regulations, or investments, than loans. As a result of the change, examiners were also allowed to evaluate CRA performance based upon a bank's record of lending in the community, instead of its skill with documentation and investment. This was an enormous improvement in process because, for small institutions anyway, regulation was better conformed to the purpose of the Community Reinvestment Act itself.

It appears the agencies' experience with the small institution category has been a resounding success for banks, the public and examiners. NDBA supports the current proposal because its adoption will reduce regulatory burden for banks which are on the borderlines of eligibility for small institution status. However, more could be achieved by increasing the small institution threshold to $1 billion, irrespective of holding company affiliation.

The 1995 adoption of the small institution exemption was a victory of substance over form and it, too, brought complaints that banks would use the exemption to shirk their CRA obligations. But the naysayers have been proved wrong. What has happened instead is that institutions that are eligible for the exemption have concentrated their limited resources on lending, rather than documentation. That result was positive for everyone. However, the proposed increase of the small institution exemption threshold to $500 million only reflects inflation since 1995 and recognizes that banks which have grown larger by that inflation are, nonetheless, community banks. Such recognition is certainly appropriate, but it does not build on the successful experience of the 1995 "deregulation" as a $1 billion threshold would do. In today's world, $1 billion banks are non-complex, community banks and the effect of deregulating their CRA compliance will enhance local lending just as it has done for other small institutions since 1995.

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A $1 billion threshold will mean 500 additional banks (and their customers) would realize the benefits of a significantly reduced regulatory burden. Yet, the reduction in assets held by banks classified as large institutions (and remaining subject to service and investment tests) would be only four percent. In the aggregate, the resources which could be saved by reducing the process (documentation) and devoted to substance (community lending) would be material.

If the agencies are unwilling to extend small institution status to institutions up to $1 billion, *carte blanche,* the regulations can approach the matter as one of presumptive qualification as has been done to reduce regulatory burden in other areas. The presumption would be that institutions up to $1 billion are presumptively qualified for the exemption unless their primary federal regulator notifies them otherwise. The action by a federal regulator could be founded on an institution's past, unresolved unsatisfactory CRA ratings or on other negative factors such as an institution's record of engaging in a pattern and practice of abusive lending or deceptive practices as defined and established under other applicable law and regulations. (Of course, such institutions would have to be able to make their qualification for the exemption.) This approach of presumptive qualification for the exemption effectively protect public interests while releasing many individual institutions from regulatory burden which is not warranted by that institution's record for meeting its CRA obligations.

ABUSIVE LENDING PRACTICES

The agencies' desire to give banks and savings institutions examples of practices which will be deemed to be abusive and negatively affect an institution's CRA ratings should be encouraged. However, banks and savings associations should not be made the scapegoats for the practices of other, less regulated lenders. So far as NDBA is aware, North Dakota banks and savings associations do not engage in lending practices which the agencies designate as or consider being abusive or predatory. While we agree institutions are served by knowing "up front" that designated practices will negatively impact CRA ratings, it is even more important that the agencies recognize the connection between undesirable contractions of credit and regulations that are overly broad. Banks and savings institutions pay sincere attention to regulations and care must be taken that responsible banks and savings association are not discouraged from offering products to meet specialized credit needs of low and moderate income customers and communities.

Sincerely Yours,

NORTH DAKOTA BANKERS ASSOCIATION

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