

Statement of

Rahn V. Barnes

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives

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Mr. Chairman and members of the Committee, my name is Rahn Barnes. I am Vice President and CRA Officer and Manager of Community Development for Provident Bank, headquartered in Baltimore, Maryland. Provident is a \$6.5 billion, full-service commercial bank, with 142 branches in Maryland, Virginia, the District of Columbia and southern Pennsylvania. I am pleased to be here today to present the views of the American Bankers Association on the Community Reinvestment Act, enacted 30 years ago by Congress. The American Bankers Association (ABA) brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.

The ABA believes that bank compliance with the spirit and letter of the Community Reinvestment Act is healthy, reflecting the fact that bankers, regulators and community groups have all learned from one another over the past 30 years. Forging partnerships and the development a deeper understanding of the perspectives of all parties has led to an open and effective system that now more accurately reflects banks' involvement in serving their entire communities. This evolution of the process has not been without its difficulties, but it has led to improvements. In marking the milestone of the Community Reinvestment Act's 30th anniversary, we think it valuable to look back on its

maturity, consider its current state and look forward to its prospects. To that end, my testimony will make the following three points:

- The banking agencies' implementation of the Community Reinvestment Act has matured so that CRA examinations more clearly demonstrate that bankers are serving their entire communities well.
- The CRA examination process is an open process incorporating public opinion and comment as well as the regulators' review of banks' compliance.
- Going forward, we believe that the CRA regulatory process must improve by favoring simplicity, encouraging greater flexibility, and recognizing the value added by specialized expertise developed by bankers over the last three decades of complying with CRA.

I. CRA Implementation Clearly Demonstrates that Banks Serve Their Communities Well

The Community Reinvestment Act is a relatively simple mandate to the banking regulators to encourage, and to assess the record of, depository institutions in helping to meet the credit needs of their entire community. Since enactment in 1977, there have been few amendments to the law – requiring a public evaluation; requiring multi-state examinations to include state-by-state CRA analysis; allowing regulators to give credit for investments in minority- and women-owned banks; and requiring Satisfactory or better CRA ratings in order for a bank holding company to become a financial holding company. These amendments have not fundamentally changed the initial charge of the statute: that regulators should encourage and evaluate the efforts of their regulated institutions to help meet the credit needs of their communities.

However, revisions to the CRA regulatory process have been much more extensive. Bank regulators' initial attempt to meet the mandate of the Act put the emphasis on process rather than performance. Banks were assessed on 12 factors that were more about getting through compliance wickets than about actually delivering credit into local neighborhoods to the citizens and businesses that needed the capital. The CRA examination process became a paper trail for talking the talk, rather than recognition that banks were walking the walk.

In fact, there was almost unanimous dissatisfaction with the CRA regulatory process by the early 1990s. This dissatisfaction on the part of bankers, community activists and regulators led to important changes in the regulatory requirements under CRA and to the examination process itself. Among the changes included in new regulations issued in 1995 were the recognition that CRA evaluations should be streamlined for small banks, that performance by larger banks could be achieved by providing loans, investments and services, that all banks operated in a context taking into consideration their capabilities and their markets, and that what constituted community development should be pegged to activities with favorable impact on identified community needs. While application of these concepts has been accompanied by growing pains for agencies, community groups and banks and it would be an exaggeration to say banks are content with the burdens that remain, the reality is that the new CRA regulations are a marked improvement in important ways over the old CRA regulations.

The post-1995 CRA examination process reflects banks' contributions to their communities far better than the old examination procedures, fostering recognition of the level of community-based lending banks have always engaged in. By differentiating between large banks and small banks, the regulations have balanced documentation and reporting requirements with measurement of performance of more than 88 percent of the banking assets of the nation under the more detailed large bank examination procedures. At the same time, more than 90 percent of banks by number that

represent less than 12 percent of industry assets are spared some reporting burdens that are unnecessary to evaluating their commitment and service to their communities.

No more succinct evidence that the CRA today better reflects banks' success in serving the credit needs of their local communities can be cited than to observe that 98 percent of banks and savings associations receive composite CRA ratings of Satisfactory or better. Some may scoff at this achievement, but the fundamental truth is that banks are tested in the marketplace every day to demonstrate their responsiveness to the needs of their local communities—and those that do not serve the credit needs of their entire community do not prosper. It is, therefore, not surprising that the banking industry excels at satisfying community credit needs.

Banks are in the business of promoting financial intermediation—of bringing together those with capital and those who need capital. We do not build communities on our own. Our role is to help individuals and businesses build our communities—and we compete vigorously among ourselves for the privilege. Drill down in a CRA public evaluation and you will read about how we compete for market share across all income levels and all neighborhoods. You will also see how we help individuals reach their dreams, provide enterprising business men and women a boost toward success, and partner with community organizations to serve populations of modest means or neighborhoods with special needs.

To illustrate what I am talking about, Provident recently expanded its relationship with the Baltimore affiliate of NeighborWorks Neighborhood Housing Services (NHS). My bank had long recognized and supported the NHS Baltimore affiliate's exemplary track record in homeownership counseling. We were also aware of the targeted low-to-moderate income (LMI) lending and servicing experience of the Baltimore affiliate. Acknowledging that experience and recognizing the need, a new loan purchase and servicing agreement was recently "inked" inaugurating a new partnership between

Provident and Baltimore NHS. Based on its frontline grass roots experience, NHS developed a targeted niche product, which Provident approved as a lending tool. This tool is designed to assist homeowners who may have been victims of predatory real estate practices and who may be in danger of foreclosure.

The partnership's ultimate goal is neighborhood and community stabilization in our attempt to help stem the growing tide of foreclosures in Baltimore. Provident is also close to closure on similar arrangements with other NeighborWorks affiliates in the shared footprints of Greater Washington and Central Virginia.

II. The CRA Examination Process is Open, Incorporating Public Comment and Review of Banks' Compliance

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 availability of the bank's CRA Public Evaluation combined with the regulation's open solicitation to the community to comment on the institution's CRA performance has led to a CRA process that is largely transparent, with significant opportunity for community residents and groups to comment. The value of public CRA evaluations in documenting an institution's lending to its community is that it brings to bear the power of public scrutiny as the engine of encouragement. It 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.

Elements of this open process include tens of thousands of pages published each year detailing bank performance, all of which is readily available on the Internet. Another element is that the CRA regulations require maintaining a CRA public file containing the institution's 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 by the public and by examiners at any time, and regulations require posting of a lobby notice in every branch of the bank notifying the public of this resource.

We also note that while the Community Reinvestment Act is not an anti-discrimination statute in the way that the Fair Housing Act or the Equal Credit Opportunity Act prohibit discrimination in lending, the regulators have added to the CRA examination process a requirement to take into account any evidence of illegal discrimination in lending or other illegal consumer credit practices. The bank regulators have done so under the argument that illegal or discriminatory credit practices cannot be said to help meet the credit needs of a community but rather the reverse. Because banks and savings institutions, unlike other lenders, are *regularly examined* for their compliance with the fair lending laws and the consumer protection laws, such as the Truth-in-Lending Act and federal law prohibiting unfair or deceptive acts and practices, agencies have a record of the bank's compliance with these laws when the regulator conducts a CRA examination. Mandatory inclusion in the CRA Public Evaluation of a negative finding by examiners, resulting in a downgrade in CRA rating, brings greater visibility to the fair lending record of banks and savings associations than is seen in other, less scrutinized sectors of the mortgage market.

Thus, we conclude that the CRA examination process is one that has improved considerably over time, in particular by balancing the burden between smaller and larger institutions, enlarging the range of lending that receives CRA credit in rural communities, and requiring consideration of any evidence of discriminatory lending or violations of consumer credit protection laws. Given the transparency of the evaluation process and the many avenues for the interested public to comment on, provide input to, or criticize that public record, no other enforcement mechanism for CRA is needed.

III. The CRA Examination Process can be Improved

Looking forward, bankers believe that the CRA regulatory process must continue to evolve to meet changing markets and participants. We believe that there are three major areas where improvements can be made:

- Simplify the regulatory process to reduce unnecessary burden.
- Add flexibility to the regulations to encourage responsiveness of the institution to its particular community's needs.
- Provide broader authority to make public welfare investments.

Simplify the Regulatory Process: In many ways, the CRA regulations and examination are still too complex. To begin, bankers are required to know not only the ins and outs of the CRA regulations but also the much more complex specifics of the supplementary guidance issued by the regulators in the CRA Questions and Answers. We believe it notable that the CRA Q&A is considerably longer and more detailed than the CRA regulations, and is much harder to use. The regulators have proposed a complete revision of the last Q&A from 2001, but despite few controversies in the Q&A, it is still pending release from the regulators.

Another example of the drift into complexity came with the recent revisions to the CRA regulations re-balancing the definition of a “small bank” so as to relieve such institutions from unnecessary burden. Since the 1995 reform effort, the depository institution industry has continued to evolve and consolidate. Based on FDIC data, institutions over \$1 billion in assets accounted for 88.3 percent of industry assets as of September 30, 2007. Proportionately and in absolute dollars, more banking assets are covered by the \$1 billion large institution test today than were covered in 1995 when

the small bank/large bank distinction was first established and set at \$250 million. While this change was an excellent example of the evolution of the CRA regulations, we note that in making this change the banking agencies added an entirely new CRA examination—the Intermediate Small Bank CRA Examination. To go from the simplicity of two examinations—one for small banks and one for large banks—to three examinations, with the new one containing a wholly new approach to assessing community development activities, was simply an unnecessary complication of already complicated regulations.

Add Flexibility: Regulators need to adjust the regulations and examination process to encourage responsiveness of institutions to changing markets rather than preserving a standardization to make measurement easier for the examiner. As a specific example, the definitions used to determine whether a loan, investment or service are community development that qualifies for CRA credit are still too complex and narrow in scope. Bankers, members of Congress and communities know that our citizens need a much higher level of financial literacy to function well in our complex economy. Many banks, in fact, participate in providing financial literacy training—training which benefits the entire community by educating the general public on how to save, budget, evaluate financial service offers and to qualify to buy a home. However, under the CRA regulations, much of this is not recognized as having a CRA value because the training does not fit the rather narrow restrictions requiring that any program document that a majority of the participants are low- or moderate-income residents. Frankly, proving such an impact can be daunting for the bankers in the community. More importantly, this restriction fails to recognize how our financial markets have evolved and the broad need for financial literacy in all economic and educational strata of our society.

Another area in which regulators need to be more responsive is in the process of revising the CRA Q&As, which are critical to meeting examination expectations. The last full revision of the Q&As was in 2001, and the latest revision has been pending for some time.

Broader authority to make public welfare investments: To fulfill the spirit of CRA, banks need broader authority to make public welfare investments. As we have noted, CRA is fundamentally a public evaluation process. It provides no new bank powers or authority. Rather it assesses how well banks use their existing powers to serve their communities. Without proper authority to make public welfare investments, banks are prevented from participating in some important community development projects.

The Financial Services Regulatory Relief Act of 2006 amended the OCC authority for national banks to make public welfare investments by raising the percentage allowed from 10 percent to 15 percent of capital and surplus. ABA supported this change. However, the amendment also changed the test for a valid public welfare investment from one primarily “to promote the public welfare, including the welfare of LMI communities and families” to “investments ... each of which promotes the public welfare by benefiting primarily LMI communities or families....” This change in purpose appears to restrict the community development public welfare investments that national banks and state member banks may make, drastically reducing the economic development activities of community development lending. As a result, there appear to be community development investments that would qualify for CRA credit (in disaster areas or distressed or underserved communities or provide economic development) but can not be shown to be “primarily benefiting LMI communities or families.” Since there is *no* investment authority under the CRA itself, most CRA community development investments are done under the public welfare authority, which is now limited. In addition, public welfare projects,