

Testimony of

Leslie R. Andersen

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives

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Chairman Frank, Ranking Member Bachus, and members of the Committee, my name is Leslie R. Andersen. I am President and CEO of Bank of Bennington, headquartered in Bennington, NE. Bank of Bennington was founded 86 years ago and was primarily an agricultural bank. Over the years the community has grown and changed and is now a bedroom community for Omaha. While our bank continues to serve agricultural customers, our trade area also includes the Omaha metropolitan area. I am pleased to be here today to present the views of the American Bankers Association (ABA) on the Community Reinvestment Act (CRA), enacted by Congress more than 30 years ago. 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 \$13.3 trillion in assets and employ over 2 million men and women.

ABA believes that compliance with the spirit and letter of the Community Reinvestment Act by banks and savings associations is healthy. Forging partnerships among bankers, community organizations, and regulators has resulted in the development of a deeper understanding of the perspectives of all parties, which in turn 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 difficulties, but it has led to improvements. 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. But first, we would like to point out an inconsistency we believe exists. Unlike banks and savings associations, not all depository institutions report on or clearly demonstrate their performance in this area. To this end, as Congress considers regulatory reforms which close the gaps in oversight under the current regime, we believe Congress should also close the gaps in CRA, covering depository institutions chartered as credit unions, to ensure that they, like banks and savings associations, are subject to a transparent process that demonstrates their record of helping to meet the credit needs of the entire constituency they are chartered to serve.

In my testimony today, I will cover the following three points:

- The banking agencies' implementation of the Community Reinvestment Act has matured so that CRA examinations demonstrate bankers' successful record of serving their entire communities.
- The existing CRA regulatory process for banks and savings associations provides appropriate mechanisms for public involvement and agency enforcement and does not require Congressional action at this time.
- Going forward, we believe that the CRA regulatory process must be improved by favoring simplicity, encouraging greater flexibility, and comprehensive application to other similarly-situated depository institutions.

I. The CRA Exam Process Has Been Updated to Better Reflect the Success of Banks in Serving Their Communities.

The Community Reinvestment Act is a relatively simple mandate to the banking regulators to encourage, and to assess the record of, banks in helping to meet the credit needs of the entire local community in which the institution is chartered, consistent with their safe and sound operation. It is the statutory bedrock principle of CRA that access to credit must be predicated on safe and sound operations. Observing this principle is what assures regulators, banks and the public that proper CRA loans strengthen our communities—not undermine them. Revisions to the CRA regulatory process during the past 30+ years have been 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 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.

By the early 1990s there was almost unanimous dissatisfaction with the CRA regulatory process. This dissatisfaction on the part of bankers, community organizations and regulators led to important changes in the regulatory requirements under CRA and to the examination process itself. After extensive discussions of all interested parties, the federal banking agencies issued substantially revised CRA rules in 1995. Among the changes included 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 should be evaluated in the proper 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 current CRA regulations are a marked improvement over the pre-1995 CRA regulations.

As a companion to these extensive changes, 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. At the same time, more than 90 percent of banks by number, which 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.

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. 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. CRA performance is not designed to be graded on a bell-curve. 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. Those community organizations that wish to influence a bank's rating have a regulatorily assured right and process to comment on any bank's record that they choose and have that considered by the federal regulator responsible for evaluating that charter's performance. Every federal banking agency regularly publishes lists of institutions about to be examined to ensure the public can comment.

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 safely and soundly—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 my bank has developed a credit builder program designed specifically for the Burmese refugee community living in Omaha. Our successes include helping these new Americans achieve the American dream of home ownership.

II. The CRA Regulatory Process Provides Appropriate Mechanisms for Public Involvement and Agency Enforcement.

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 process is largely transparent, with significant opportunity for community groups and other 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 and through an open solicitation by regulators to the community to comment on the institution's CRA performance. 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 are readily available on the Internet. In addition, the CRA regulations require all banks and savings associations to maintain 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 both members of the public and 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 like the Fair Housing Act or the Equal Credit Opportunity Act, the regulators have added to the CRA examination process a requirement that examiners take into account any evidence of illegal discrimination in lending or other illegal consumer credit practices. The bank regulators have done so under the premise that illegal or discriminatory credit practices are a detriment to meeting the credit needs of a community and that a bank that engages in discriminatory practices is not truly serving the credit needs of its community. Because banks and savings associations, unlike other lenders, are *regularly examined* for their compliance with fair lending laws and consumer protection laws, agencies have a record of each bank's compliance when they conduct CRA examinations.

Furthermore, the banking agencies' application authority over new or expanded charters provides more than sufficient public and agency leverage to ensure that applicants are held accountable for their CRA performance before they are permitted to undertake new charters or combine existing franchises. Thus, we conclude that the CRA examination process is one that has improved over time, in particular by differentiating the burden between smaller and larger institutions, enlarging the range of lending that receives CRA credit in rural communities, and ensuring favorable CRA consideration is given for activities that benefit underserved communities

and areas affected by natural disasters. Given the transparency of the evaluation process, the authority to impact the application process and the many avenues for the interested public to comment on, provide input to, or criticize the bank's public record, no other enforcement mechanism for CRA is needed.

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. CRA is a direct outgrowth of the federal "needs and convenience" standard that is a fundamental authority of the prudential regulator to judge and decide. The existing CRA enforcement mechanism works well. Divorcing CRA from prudential oversight, as has been recommended, would separate the statutory enforcement mechanism from regulatory oversight. The CRA is not a consumer protection law and any re-assignment of CRA responsibility to a specialized consumer protection agency untutored in, and un-constrained by, a safety and soundness mission would unnerve the regulatory process. ABA appreciates Chairman Frank's understanding of this issue and his desire to keep CRA evaluation and enforcement aligned with the bank's prudential federal regulator.

III. The CRA Examination and Regulatory Process can be Improved.

Looking forward, bankers believe that the CRA regulatory process should be simplified to reduce unnecessary burden. We believe more flexibility should be added to the regulations to encourage responsiveness of the institution to its particular community's needs. In addition, CRA must continue to evolve to meet changing markets and participants and should be extended to assure that all depository institutions are appropriately evaluated on their record of meeting the credit needs of their chartered constituency.

Simplify the Regulatory Process: Since the 1995 reform effort, the depository institution industry has continued to evolve and consolidate. Proportionately, and in absolute dollars, more banking assets are covered by the large institution test today than were covered in 1995 when the small bank/large bank distinction was first established and set at \$250 million in assets. In 2005, three of the banking agencies redefined the size breakdowns by inserting a new “intermediate small” bank category and corresponding new evaluation process. The fourth agency subsequently followed this needless complication. Rather than invent unnecessary distinctions among banks, the agencies should return to the simple dichotomy of small versus large institutions and to the apportionment of industry assets covered by those respective divisions that reflect the boundary set in 1995 when approximately 80 percent of industry assets were covered by the large institution test. The premise underlying this change was recognition by the regulators that small, community-based organizations are integrally tied to their communities and it would be a mistake to undermine the ability of community banks and savings associations by imposing unnecessary costs and burdens. To go from the simplicity of two examinations (one for small banks and one for large banks) to three examinations was simply an unwarranted complication. Accordingly, the small-to-large bank threshold should be set at no less than \$1 billion (adjusted to maintain the 1995 division of industry assets under large bank coverage) and all banks under that threshold should be examined using streamlined criteria.

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.

Add Flexibility: Regulators need to adjust the regulations and examination process to encourage responsiveness of institutions to changing markets. The definitions used to determine whether a loan, investment or service satisfies the community development criteria that qualify for CRA credit are still too narrow in scope. For example, there seems to be widespread consensus that financial literacy for all consumers 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 that will pass supervisory muster under CRA. ABA believes that all forms of bona fide financial literacy activities should receive favorable consideration in a CRA evaluation. Congress could step in to compel the recognition of such a policy if the agencies do not voluntarily revise their regulations or interpretations.

Although there has been progress since the last time ABA has testified on this subject, we continue to press the agencies for giving investments in minority-owned and women-owned institutions appropriate CRA credit as community development activity. In addition, as sensible a policy as streamlining small bank examination criteria was in 1995 to recognize their primary lending mission, ABA believes that it was not intended and should not be applied to exclude such banks from receiving due credit for community development activities they voluntarily elect to conduct. Accordingly, we continue to urge the banking agencies to apply the small bank examination criteria as broadly and flexibly as possible so that any form of community development activity legitimized by the regulatory definitions can receive positive credit when offered for consideration by a small bank during its examination.

Extend CRA's Reach to Cover All Depositories: In the 30 years that have passed since the adoption of CRA, the market for credit and for financial assets has continued to diversify. Although CRA itself is tailored to the banking industry, its core concepts of helping to meet the financial needs of the institution's entire chartered community safely and soundly; applying standardized but flexible criteria to measure performance; and providing public visibility for the resulting evaluation are applicable to other sectors – especially to credit unions that also have a Congressional mandate to serve persons of modest means and who are increasingly seeking community-based charters. It is not that CRA in its current regulatory detail should be applied as is to other financial sectors; but rather we see that the appropriate level of performance documentation combined with a high degree of transparency can be a model for other regulators to encourage their depository institutions to publicly demonstrate their commitment to the communities “in which they are chartered.”

Conclusion

The American Bankers Association believes that the current state of bank compliance with the spirit and letter of the Community Reinvestment Act is healthy and that bankers, regulators and nonprofit community organizations have all learned from each other over the years in forging partnerships to promote their communities. We believe that there has been significant evolution of the implementation of the CRA over the years, and that evolution will need to continue, including, parallel requirements for other depository institutions. We recommend changes to simplify the process and add more flexibility, which will improve CRA for the future.