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From: Hubert Van Tol [hvantol@centurytel.net]
Sent: Monday, March 08, 2004 3:51 PM
To: regs.comments@ots.treas.gov
Subject: Regulation Comments, Attention: No. 2004-04

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March 8, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW,
Washington 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington DC 20429

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington DC 20552

Dear Officials of Federal Bank and Thrift Agencies:

As a member of the National Community Reinvestment Coalition, Fairness in Rural Lending urges you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's rural, minority, immigrant, and low- and moderate-income communities. Your proposed changes are contrary to the CRA statute because in our opinion they will slow, if not reverse, the progress made in community reinvestment.

The proposed changes include three major elements: 1) provide streamlined and much weaker CRA exams for banks with assets between \$250 million and \$500 million; 2) establish a weak predatory lending compliance standard under CRA; and 3) expand data collection and reporting for small business and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage caused by the first two proposals.

In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas in their proposal, and thus missed a vital opportunity to continue to expand CRA's effectiveness. Increasingly large financial institutions are doing business far from their deposit-taking branches and home offices. Thus in a state with a large number of rural communities like Wisconsin we find some of

the largest financial institutions in the country becoming an increasing part of our overall financial services market, by pushing high cost loans through affiliates, but having no CRA obligations to provide services and investments to communities that are by and large the kind of low and moderate income communities that CRA was designed to benefit.

For example Citigroup, with its CitiFinancial affiliate and HSBC with its Household and Beneficial affiliates both do a large amount of high cost lending in Wisconsin, but have no CRA obligation to provide us with beneficial prime-priced products or to make investments to support the work of non profit organizations providing low cost housing, or supporting small business development in low and moderate income communities. Their size, dominance in the market, and marketing capacity threatens to overwhelm some of the positive prime rate lending done by our local lenders because they primarily offer products that hook low and moderate income customers on an expensive debt treadmill that is hard to get off.

Streamlined and Cursory Exams. Under the current CRA regulations, banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between \$250 and \$500 million. This proposed change would have particular impact in Wisconsin and the Midwest where so many of these medium sized community banks are located. In Wisconsin this proposal would remove an additional 36 banks from the "large bank" CRA performance evaluation and leave just 23 banks out of a total of 311 banks which will still be reviewed for their investment and service record.

This proposal adds insult to injury since the banking regulators are already very lax about bringing banks into the "large bank" test as their assets grow. Currently small banks are reviewed every five years while large banks are reviewed every two years and it seems to be the regulators' habit to leave banks on the small bank review schedule as their asset size grows past the threshold level. Additionally the first CRA review after a bank grows past the current \$250 million in assets threshold is usually still performed under the small bank test. This practice by the examiners which is neither sanctioned by law or regulation has the effect of already exempting a large number of banks that should be assessed using the "large bank" CRA evaluation.

In the group of banks in Wisconsin with assets between \$250 million and \$500 million the average date of the last CRA exam publication was 32 months ago. Only about 1/3 of the Wisconsin banks with assets between \$250 million and \$500 million, as of Dec. 31, 2003, have been examined under the large bank test. Of the ones that were examined under the large bank test all have either a "Needs to Improve" or "Low Satisfactory" rating on the Investment test. Our low and moderate income communities need the investments that these banks can give; its time for the banking agencies to more rigorously enforce the law, rather than to propose regulations that weaken the law and reward their poor performance.

Predatory Lending Standard. The proposed CRA changes contain an anti-predatory screen that will more than likely actually perpetuate abusive lending. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The asset-based standard falls short because it will not cover many instances of predatory lending. For example, abusive lending would not result in lower CRA ratings when it strips equity without leading to delinquency or foreclosure. In other words, borrowers can have

the necessary income to afford monthly payments, but can still lose wealth as a result of a lender's excessive fees or unnecessary products.

CRA exams will allow abusive lending if this proposed simplistic anti-predatory standard becomes part of the CRA regulation. The standard proposed does not address the problems of the packing of fees into mortgage loans and the subsequent financing of these fees, high prepayment penalties, loan flipping, mandatory arbitration, and other abuses. Rigorous fair lending audits and severe penalties on CRA exams for abusive lending are necessary in order to ensure that unsophisticated and elderly homeowners are protected; the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending outside their assessment areas, the proposed standard will frustrate the purpose of CRA.

Enhanced data disclosure. The federal agencies propose that they will publicly report the specific census tract location of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods with small business loans. Also the regulators propose separately reporting purchases from loan originations on CRA exams and separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

While we welcome the enhanced data disclosure, the positive aspects of the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use the new data to provide less weight on CRA exams to high cost loans than prime loans and assign less weight for purchases than loan originations.

Missed Opportunity to Update Exam Procedures: The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams. Lastly, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches. Many banks make considerable portions of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams.

We urge the regulators to go back to the drawing board to come up with a proposal that truly meets the needs of communities by updating CRA to meet current market realities. As currently written we believe that this proposal does more harm than good. Thank you for your attention to this critical matter.

Sincerely,

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Cc:

National Community Reinvestment Coalition
President George W. Bush
Treasury Secretary John W. Snow