

343

April 6, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Ave., NW
Washington, DC 20551
Docket N0. R-1181

Communications Division
Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 1-5
Attention Docket 04-06
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Att: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: 12 CFR 345

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

Dear Ladies and Gentlemen:

The following comments are provided on behalf of MB Financial Bank, N.A., a \$4 billion bank with offices in the Chicago Metropolitan area of Illinois.

MB Financial Bank is committed to fulfilling the letter and spirit of the Community Reinvestment Act as well as those acts which regulate fair lending practices such as: the Equal Credit Opportunity Act, Fair Housing Act, Real Estate Settlement Procedures Act, Truth in Lending Act and the Home Ownership and Equity Protection Act, as well as other acts and regulations that govern the free and equitable access to housing finance and credit. MB Financial Bank has received the highest rating for compliance with the CRA in examinations for the past six years. As indicated in our comment later related to the Advance Notice of Proposed Rulemaking, it is our opinion that there should not be any changes to the CRA regulations. We would like to recommend that the regulators take into consideration the following comments on the proposed rules:

§ Sec. 228.12 Definitions

(t) Small bank means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than \$500 million.

Comments: We reiterate our comment contained in the reference to the ANPR that we do not support the proposal to raise the small institution asset threshold to \$500 million.

§ Sec. 228.28 Assigned ratings

(c) Effect of evidence of discriminatory, other illegal and abusive credit practices. (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of the following in any geography or in any assessment area by any affiliate whose loans have been considered pursuant to Sec. 228.22 (c):

- (i) In connection with any type of lending activity described in Sec. 228.22(a), discriminatory or other illegal practices including, but not limited to:
 - (A) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
 - (B) Violations of the Home Ownership and Equity Protection Act;
 - (C) Violations of section 5 of the Federal Trade Commission Act;
 - (D) Violations of section 8 of the Real Estate Settlement Procedures Act; and
 - (E) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.
 - (ii) In connection with home mortgage and secured consumer loans, a pattern or practice of lending based predominantly on the foreclosure or liquidation value of the collateral by the bank, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.
- (2) In determining the effect of evidence of practices described in paragraph (c) (1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

Comment: We question the need to formally list the violations that will adversely affect a bank's CRA performance. There is significant body of work that demonstrates that the issues identified in the above paragraph will adversely affect a bank's CRA performance by examination of any of the bank regulators. The proposal itself and the research of the issue does not cite any evidence that the bank regulators have found a pattern and practice of regulated banks that would constitute a looming issue that needs to be addressed by "codifying" issues where laws and regulations already exist to deal with outliers and non-compliant institutions. The addition of another layer of regulatory burden in this manner may defer resources and emphasis from the major activity of reinvesting in our communities without real benefit to the public and detract the focus of the examination staff from the review of performance (Performance Context) of how the regulated depository institutions lend, invest and provide services for the economic revitalization of our country.

We do not believe that the un-regulated non-compliant abusive lenders will be dissuaded from their practices through this rule. The inability of state governments to regulate these "mavericks" that rip off unsuspecting consumers is no excuse to overlay additional regulatory burden on regulated depositories.

Also with regard to the following items of discussion noted in the supplemental information:

Loan Purchases and Originations – MB Financial Bank supports the proposal to distinguish loan purchases from loan originations in the public evaluation. Regulated depositories who provide capital to this market are providing a vital source to refuel the need for capital and perform a very important function to ensure that abusive practices of state-regulated non-depositories are reviewed for compliance with lending laws and regulations. MB Financial Bank supports the recommendation that purchased loans should have the same weight as loans originated for evaluation of CRA impact.

Enhancement of Public Performance Evaluations - MB Financial Bank supports the proposed changes to the Public Performance Evaluations to include the **number** of purchased loans (as a measurement for how well the regulated entity is serving the capital needs for low-balance consumers), HOEPA loans and of loans for which rate spread information is reported under HMDA and affiliate loans.

§ Sec.228.42 Data collection, reporting and disclosure

(h) CRA Disclosure Statement

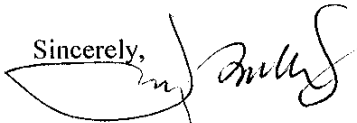
Comments: MB Financial Bank supports the proposal to revise the Disclosure Statement to include the **number** and amount of small business and small farm loans by census tract (vs. the aggregation of this data by census tract) for each of the data categories noted in the regulation.

In closing, MB Financial Bank applauds the agencies efforts to provide opportunities for review and comment of the CRA regulation. We reiterate our objection to changes in the CRA regulations for those presently CRA regulated institutions. It has taken nearly a decade for the financial institutions and the examiners from the regulating bodies to fully incorporate the evaluation methods and regulatory changes that were brought about in the last CRA rules changes.

We believe that applying the rules established for regulated depository institutions to the presently non-CRA regulated institutions will provide the most effective tool to identify and prevent the abusive practices that impact our communities. We strongly encourage the bank regulators to begin the process to control these outliers and prevent the systematic erosion of the most precious financial asset of the American public.

In conclusion we strongly recommend that the regulators maintain the current regulation for those presently covered, with some modest changes, in order to effectively implement the regulation as well as to monitor its success.

Sincerely,



Thomas P. FitzGibbon, Jr.
Executive Vice President
Chief Retail Banking Officer