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**Mark A. Willis**  
 Executive Vice President

April 6, 2004

**Robert E. Feldman**  
 Executive Secretary  
 Attention: Comments/OES  
 Federal Deposit Insurance Corporation  
 550 17th Street, N.W.  
 Washington, D.C. 20429  
[comments@fdic.gov](mailto:comments@fdic.gov)

Regulation Comments  
 Chief Counsel's Office  
 Office of Thrift Supervision  
 1700 G Street, N.W.  
 Washington, D.C. 20552  
 Attention: Docket No. 2001-49  
[regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)

**Ms. Jennifer J. Johnson**  
 Secretary  
 Board of Governors of the Federal Reserve  
 System  
 20th and C Streets, N.W.  
 Washington, D.C. 20551  
 Docket No. R-1112  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Communications Division  
 Public Information Room, Mailstop 1-5  
 Office of the Comptroller of the Currency  
 250 E Street, S.W.  
 Washington, D.C. 20219  
 Attention: Docket No. 01-16  
[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

By E-Mail and Overnight Mail

Re: Joint Notice of Proposed Rulemaking Regarding the Community  
 Reinvestment Act Regulation

Dear Sir or Madam:

JPMorgan Chase Bank and its bank affiliates (collectively, "JPMorgan Chase") appreciate the opportunity to comment upon the Joint Notice of Proposed Rulemaking (the "Proposal") regarding proposed changes to the regulations ("the Regulation"), which implement the Community Reinvestment Act ("CRA"). The Proposal results from the bank regulatory agencies' (the "Agencies") review of the current Regulation since changes were adopted in 1995.

JPMorgan Chase is troubled by the Proposal and recommends that the Agencies not adopt it. The Proposal would place an inappropriate risk and concomitant difficult burden on banks, particularly large retail banks, in managing their CRA activities.

**A. The Agencies Did Not Address the Problems with the Investment Test**

As an initial matter, JPMorgan Chase must convey its deep disappointment that the Agencies did not adopt its (and others') recommendation to reorganize the Lending, Investment and Service Tests into a Retail Banking Test and a Community Development Test. By moving community development lending and community development investments into a new Community Development Test, JPMorgan Chase's suggestions would have addressed the legitimate difficulties that banks have in meeting the requirements of the Investment Test. The Investment Test does not assess how well an institution is meeting the credit needs of the entire community. It assesses how much the institution has invested, whether the investments are CRA-eligible, whether any investments are innovative or complex and how the portfolio compares quantitatively, but not qualitatively, with the investment portfolios of peer institutions. The performance evaluation does not consider whether making investments is aligned with the bank's business strategy or whether the investments are prudent or even yield a return, because the Regulation requires large retail banks to make CRA-eligible investments regardless of these considerations. JPMorgan Chase's proposal would have helped institutions to better align their CRA initiatives with their business strategies, enhancing their ability to make meaningful investments in their communities, and would have helped examiners to more easily balance qualitative and quantitative measures.

**B. JPMorgan Chase Opposes Expansion of the Regulation to Downgrade a Bank's CRA Rating Because of Violations of Certain Consumer Protection Laws**

The current 12 C.F.R. § \_\_.28(c) provides that evidence of discriminatory or other illegal credit practices adversely affects the CRA evaluation of a bank's performance. The Proposal would replace the current 12 C.F.R. § \_\_.28 with a more detailed provision that provides that a bank's CRA performance is adversely affected by evidence of the following in any geography by the bank or in any assessment area by an affiliate whose loans have been considered (emphasis added):

- (i) Discriminatory or other illegal practices including, but not limited to:
  - (A) Discrimination on a prohibited basis in violation of the Equal Credit Opportunity Act ("ECOA") or the Fair Housing Act ("FHA");
  - (B) Violations of the Home Ownership and Equity Protection Act ("HOEPA");
  - (C) Violations of section 5 of the Federal Trade Commission Act ("FTC");
  - (D) Violations of section 8 of the Real Estate Settlement Procedures Act ("RESPA");
  - (E) Violations of the Truth in Lending Act ("TILA") provisions regarding a consumer's right of rescission; and
- (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.

The new additions that can trigger a CRA downgrade are (i) discriminatory or other illegal practices in violation of certain specified as well as unspecified consumer protection acts; (ii)

engaging in a pattern or practice of asset-based lending where the borrower cannot be expected to repay; and (iii) violations of either (i) or (ii) by a mortgage affiliate whose loans are used for CRA credit. JPMorgan Chase is dismayed that the Agencies would consider expanding CRA into an umbrella "super-compliance" regulation when appropriate remedies already exist in these other regulations.

I. The Current Provision is Sufficient and Retains the Distinction between CRA Compliance and Compliance with Other Consumer Protection Laws

JPMorgan Chase believes that the language of the current provision is more than sufficient to cover a bank's discriminatory or other illegal practices that are specified in 12 C.F.R. § \_\_.28(i)(A)-(E) and therefore the new additions are unnecessary.

The overriding purpose of the CRA is to ensure that banks help meet the credit needs of the communities they serve, including low- and moderate-income communities. The current CRA regulations were drafted to evaluate how well banks are meeting these needs. However well-intentioned, it is totally inappropriate to overlay the entire structure of consumer compliance on CRA. These are two distinctly different spheres and should be treated as such. With respect to the newly specified acts, each of them has its own compliance and enforcement mechanisms. Each of these laws was passed by Congress at different times to achieve different and distinct purposes. Compliance with each of these laws is already strictly monitored by the Agencies during consumer compliance examinations. Moreover, FIRREA was specifically enacted to provide a comprehensive framework of regulatory action and enforcement powers around compliance violations. It was not Congress' intent to have the Agencies impose the entire consumer compliance examination process into CRA.

The Proposal also implies that violations of state consumer protection laws could trigger a CRA downgrade. JPMorgan Chase opposes overlaying state consumer protection laws onto a federal CRA regulation. Some states, such as New York State, already have adopted their own CRA laws. If a state perceives that violations of state consumer protection laws should impact the state's CRA rating, it can make that determination. Moreover, many state laws, such as some of the state "high cost" anti-predatory lending laws, are so complicated that it would be very easy for a mortgage lender to inadvertently violate one of their provisions without doing harm to any consumer. For these reasons, JPMorgan Chase does not believe it appropriate that state laws should play any role in determining a bank's CRA rating under the federal CRA Regulation.

It is unclear whether the rule envisions immediately stripping a bank of a current CRA rating or waiting for the next examination after a violation has been found in an affiliate's examination. The Proposal leaves many unanswered questions. But the worst outcome of the Proposal is that it would change the nature of CRA from its special status as a proactive, business-driven regulation that increases access to capital and banking services to a catch-all for all fair lending regulations, including but not limited to ECOA, FHA, HOEPA, RESPA, the FTC, and TILA as well as for asset-based lending where the borrower lacks the ability to repay.

2. The Proposal Dramatically Increases the Risk of a Financial Holding Company Losing Powers Granted by the Gramm Leach Bliley Act

Particularly troubling is the increased risk to financial holding companies of having the new powers granted to them under the Gramm Leach Bliley Act (the "GLB Act") taken away because of a CRA downgrade. A bank that currently has a "Satisfactory" rating could easily be downgraded to "Needs to Improve" for relatively minor violations of one of the consumer protection laws, such as the single failure to send a right of rescission notice. If Congress had intended that a bank's compliance with consumer protection laws could prevent a financial institution from engaging in securities and insurance activities, Congress would have included such language in the GLB Act. If adopted, the Proposal would greatly undermine the purpose of the GLB Act—to allow financial holding companies to engage in a broad array of financially related activities.

3. The Proposal Would Penalize Banks whose Mortgage Affiliates are Examined and Create an Uneven Playing Field

Currently, all depository banks and their consumer lending subsidiaries are regularly and rigorously examined for compliance with the consumer protection and fair lending laws. The Proposal would address explicitly, for the first time, the consequences of an affiliate's illegal or abusive credit practices to a bank's CRA rating. The Proposal expands the potential for a CRA downgrade to include, evidence of discrimination or illegal credit practices not only by the bank but also by any affiliate whose loans are included in the bank's CRA examination.

While the Proposal may, on its face, seem reasonable, in fact, it increases the liability of a CRA downgrade to precisely those banks that include only the loans of an affiliate that is regularly and rigorously examined for compliance with the fair lending laws. It ignores the fact that consumer lending subsidiaries of holding companies are, with a rare exception, never examined for compliance with the fair lending laws.

While the Federal Trade Commission is responsible for regulating these holding company subsidiaries for consumer compliance purposes, it uses litigation rather than examination as its enforcement tool. Litigation, of course, occurs only after a potential violation of law has occurred and nearly all litigation ends in settlement where the lender does not admit to any wrongdoing. It is highly unlikely, therefore, that banks that use loans from unexamined affiliates will ever have their CRA rating downgraded. The Proposal takes aim at those banks that already shoulder the highest level of regulatory scrutiny. Their examined affiliates already will pay significant consequences should a violation be found during an examination and those consequences include a program of strict remediation, a cease and desist order, civil money penalties and a referral to the Department of Justice for further investigation.

In effect, the Proposal creates double jeopardy for banks with examined affiliates by layering the results from affiliate examinations on top of the bank's examination and, potentially, the exam results of one agency on top of the examination results of a different agency. The unintended consequence of the Proposal is to encourage financial institutions to move mortgage lending bank subsidiaries to holding company subsidiaries to avoid double jeopardy and level the

playing field with peer banks that use loans from unexamined affiliates in their CRA examinations.

C. JPMorgan Chase Opposes the Proposed Changes to the Public Performance Evaluation

The Agencies propose to disclose in a bank's CRA Public Performance Evaluation the number of purchased loans, HOEPA loans and loans that exceed the rate spread threshold for reporting under the Home Mortgage Disclosure Act ("HMDA"). JPMorgan Chase opposes this change because it would stigmatize these loans and eventually lead to their being "discounted" or "not counted" for CRA purposes. With respect to purchased loans, the CRA regulation gives them equal weight to originations. Purchased loans help provide liquidity to the mortgage market. By distinguishing between purchased and originated loans in the Public Evaluation, the Agencies imply that there is a distinction important to the manner in which CRA should be evaluated. With respect to HOEPA loans and HMDA loans over the new threshold, the Agencies would be distinguishing these as subprime loans. It would reinforce the views of many that subprime lending is abusive or predatory on its face, contrary to the express views of the Agencies that subprime lending, when done properly, helps borrowers obtain loans who otherwise would not have been able to get them. Moreover, with the HOEPA and HMDA threshold loans, this information is already available in the publicly released HMDA data. To import this into CRA suggests falsely that there is some significance to these loans for CRA purposes.

In sum, CRA has been appreciated by lenders for its unique ability to actually make things happen that have an impact on communities. In the world of banking regulations, CRA stands alone as a rule that has evolved over time and affirmatively encourages banks to make a commitment to their communities. It should not be confused with specific consumer regulations that have been adopted over the years for purposes of consumer protection. It rewards banks for doing more in their local communities, for being creative in structuring complex transactions that can save local municipalities' tax dollars and for providing quality financial education in multiple languages. None of these activities is specifically required and that is what makes the CRA unique and meaningful.

Thank you for the opportunity to present these views. I would be happy to discuss these issues with you.

Sincerely,

A handwritten signature in black ink, appearing to be a stylized name, possibly "John A. [unclear]".