NFHA National Fair Housing Alliance

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April 6, 2004

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

To Whom It May Concern:

On behalf of the National Fair Housing Alliance's Board and members nationwide, I urge you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations and to offer instead changes that would improve and expand CRA. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. The proposed changes will work against the statute's intentions by impeding community development and investment.

The National Fair Housing Alliance (NFHA), a consortium of 100 private, non-profit fair housing organizations, state and local civil rights groups, and individuals, was founded in 1988 to lead the battle against housing discrimination. NFHA works to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. NFHA and its members are dedicated to assuring that communities have equal access to credit and related services.

The proposed CRA changes are contrary to the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. The changes would limit the barriers to predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws.

The proposed changes include three major elements: 1) provide streamlined and cursory 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. It is only the third element that would be helpful in advancing the purpose of the CRA statute; the first two proposals would damage the expanded access to credit that CRA has created.

1) Streamlined and Cursory Exams

Under the current CRA regulations, large 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. The proposed changes would reduce the rigor of CRA exams for 1,111 banks that account for more than $387 billion in assets.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of affordable rental housing. Likewise, these banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services. Thus, the effectiveness of the Administration's housing and community development programs would be diminished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit needs if they eliminate the investment and service test for a large subset of depository institutions.

2) Predatory Lending Standard

The proposed CRA changes contain an anti-predatory screen that could 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 they are still losing wealth as a result of a lender's excessive fees or unnecessary products. CRA exams will allow abusive lending if they contain the proposed anti-predatory standard that does not address the problems of the packing of fees into mortgage loans, high prepayment penalties, loan flipping, mandatory arbitration, and other numerous abuses.

Recommendations

NFHA would like to recommend that these CRA changes be withdrawn and a new proposal be issued that would improve CRA.

- Update exam procedures by closing the loopholes in the CRA regulation with regard to bank affiliates. Banks can still elect to include affiliates on CRA exams at their option, which means that they may exclude affiliates not serving low- and moderate-income borrowers and those engaged in predatory lending. Federal agencies should instead require that all affiliates be included on exams. In addition, updated regulations should 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 is not scrutinized by CRA exams.

- Enhance data disclosure. A beneficial element included in the proposed regulations should be even stronger to make exams more rigorous. The federal agencies propose to report publicly the specific census tract locations 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. In addition the proposal includes 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). In addition to reporting the new data, the federal agencies should 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.

- Give CRA credit to regulated financial institutions for offering international remittance services to low- and moderate-income individuals. The Inter-American Development Bank estimates that remittances will reach $40 billion by the end of 2004. This is a significant amount that is often unnecessarily subject to high fees. These fees significantly decrease the value of the remittances and affect immigrant communities. If CRA credit were given for these transactions, more legitimate financial institutions would get involved and the fees for transmittal would decrease.

The proposed changes to CRA would harm the very communities intended to benefit from the statute – those that have been historically redlined by financial institutions. It is no secret that many communities remain redlined today – but today the red lines are manifested by discriminatory policies. The proposed streamlined exams and predatory lending standard threaten CRA's statutory purpose of the safe and sound provision of credit and deposit services. The proposed data enhancements would become much more meaningful if the agencies update procedures regarding assessment areas, affiliates, and the treatment of high cost loans and purchases on CRA exams.

Thank you for your attention to this matter.

Sincerely,

Shanna L. Smith

Shanna L. Smith
President and CEO