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April 6, 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, DC 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 Federal Banking Regulators:

On behalf of ACORN's more than 150,000 member families, I urge you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. The proposed changes will reduce access to capital in hard-pressed low- and moderate-income neighborhoods, while doing nothing to eliminate the scourge of predatory lending that continues to devastate our neighborhoods.

ACORN believes that since the passage of the CRA in 1977, great progress has been made in ending redlining and pushing banks to improve their lending performance in underserved communities. We have worked with banks to improve their outreach efforts, remove barriers in underwriting criteria that excluded credit-worthy low- and moderate-income applicants, and create loan counseling programs that assist first-time homebuyers.

There is still a long way to go, however, and the proposed changes to the CRA do not help us get there. In several key areas, the changes are either inadequate or make the problem worse.

Predatory Lending Standard

The proposed new standard for predatory lending, barring loans based on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to make the payments on the loan, is "new" in name only. As is indicated in the agencies' own description of the proposed changes, this practice is already banned under HOEPA and by the OCC. This change would do nothing to address the wide range of practices that make up predatory lending.

A story illustrates some of these practices. Kathleen and Thomas, a couple from Minnesota, have owned their home since 1971, and their previous mortgage had a 7.8% interest rate. They have always had an excellent credit record; Thomas, who is the primary wage earner, had 'A' quality credit scores last year of 682, 731, and 680.

In August 2002, Kathleen and Thomas received an unsolicited live check in the mail from Wells Fargo for a little over $1,000. After cashing the check, which resulted in a very high rate loan, they began receiving calls from Wells Fargo Financial offering more money and urging them to consolidate debts. At the time, Kathleen and Thomas did not know that there was any difference between Wells Fargo Bank and Wells Fargo Financial, which is the company's primary subprime lending institution. Since they had wanted to pay off some bills and buy new windows for the house, they started talking to Wells Fargo Financial about a debt consolidation.

The Wells Fargo loan officer came out to their house and told them that they could get a 6% interest rate and would close in ten days. A few weeks later, another Wells representative came out to their house. He said that because of their credit and debts, their interest rate would actually be closer to 8%. He said that he would see if he could get them a better rate.

After another couple weeks, Kathleen and Thomas went to the Wells office for the closing in September 2002. Once there, they found out that their interest rate would actually be 10.0% – at a time when 'A' rates were 6.0%. When they asked about why the interest rate was so high, the Wells representative said it was because of their credit. Despite the high rate, Wells financed their standard (at the time) seven "discount points" – stripping away close to $8,000 of their home's equity – into the $112,000 loan. Kathleen and Thomas thought about not taking out the loan, but they had been expecting

to close earlier that month and so hadn't paid the bills that the refinancing was paying off, and they felt that they had no choice.

Last June, ACORN Housing Corporation helped Thomas and Kathleen refinance with another lender into a 5.3% interest rate, lowering their monthly payments by over $400.

This is just one story among tens of thousands. Unfortunately, too many loan features that are totally legal are profoundly anticompetitive and nontransparent. Since they are still legal, these predatory features would not harm a bank's CRA rating. The regulations proposed here will do nothing to prevent the vast majority of these abuses. Stronger regulations need to be adopted to eliminate these practices.

One important feature of predatory lending, seen in the case of Thomas and Kathleen, is the steering of borrowers with good credit into the subprime market. This is particularly true of minorities. The annual study we released last month, "Separate and Unequal: Predatory Lending in America", shows that minority homeowners continue to be much more likely to receive a subprime loan than white homeowners. Among refinances—which accounts for nearly two-thirds of subprime loans—African-American homeowners were four times more likely to receive subprime loans, while Latinos were two and a half times more likely. This disparity was true even among borrowers of the same income level. 27.8% of the refinance loans received by middle-income African-Americans were subprime, as were 19.4% of the loans received by Latinos at this income level. Meanwhile, only 7.6% of the loans given to middle-income white homeowners were subprime.

These differences have huge effects on families' finances. A loan with a higher interest rate can cost a family tens or even hundreds of thousands of dollars over the life of the loan. What makes this particularly egregious is that a large percentage of these borrowers actually qualify for a prime loan, but are "steered" into the subprime market. A recent report in *Inside B & C Lending* indicates nearly 83% of subprime loans went to customers with A- or better credit ratings.[1]

The Chairman of Fannie Mae, Franklin Raines, has estimated that as many as half of all borrowers in subprime loans could have qualified for a lower cost conventional mortgage, which could save the borrower more than $200,000 over the life of a thirty year loan.[2]

Freddie Mac's estimate, while somewhat lower, was still extremely high—they found that as many as 35% of subprime borrowers could have qualified for prime loans.[3] The CEO of HSBC, when discussing plans to purchase Household International, said that

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[1] "FICO Scores Hold the Line but Deep MI Drops in 4th Quarter" *Inside B & C Credit* Vol. 9 Issue 4 p. 9 (February 23, 2004)
[2] Business Wire, "Fannie Mae has Played Critical Role in Expansion of Minority Homeownership Over Past Decade," March 2, 2000.
[3] "Automated Underwriting," Freddie Mac, September 1996.

63% of the subprime lender's customers had prime credit.[4] Huge numbers of homeowners with good credit, particularly people of color, are being steered towards subprime loans. This is itself a form of predatory lending. It also increases the risk of foreclosure, as borrowers are often paying hundreds of dollars more each month on their loan.

Banks have an important role to play in ending this discrimination. They need to step up to plate and ensure access to credit on fair terms. This progress should be monitored by requiring financial institutions to report the numbers of prime and subprime loans they make. CRA ratings on the lending test should reflect the goal of fairly meeting the credit needs of all communities with credit priced at fair terms: A loans for those who qualify for A loans, and fairly priced subprime loans where these are appropriate. Lenders making subprime loans when they could be making prime loans are not fulfilling their CRA responsibilities. What they are doing is ripping borrowers off.

Increased Threshold for Large Retail Institution Test

Regulators propose to raise the threshold for the large retail institution test from $250 million in assets to $500 million. The requirement that small institutions that are part of bank holding companies with at least $1 billion in assets be subject to the large institution test is eliminated. This would double—from 11% to 22%--the number of banks that are subject to the weaker small institution test, affecting over 1,100 banks with more than $350 billion in assets.

Excluding these banks from the large institution test is a bad idea. The large institution test, with its investment and service components, is an important tool for our communities. The investment component plays a major role in meeting affordable housing and economic development needs in our communities. The service test, while not as strong as it should be, helps push banks to provide vital banking services to underserved neighborhoods, helping give alternatives to the check cashers and payday lenders who prey upon poor people.

Under the proposed changes, more than a thousand banks would no longer be subject to the investment and service tests. This would mean less investment and legitimate banking products in the areas that need them most.

Holding mid-sized banks accountable for serving local communities is particularly important now, as mergers and consolidation create a set of giant national banks, less accountable to local needs and less susceptible to local pressure. This only increases the importance of mid-sized banks, and means it is particularly important to continue to subject them to the large institution test. Too many lenders we have talked to in the small bank category think of this test as a virtual exemption from the CRA. For these reasons, the threshold for the large institution test should be left where it is.

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[4] "HSBC: Why the British Are Coming: Chairman John Bond Explains Why the Usually Cautious British Bank Paid a 30% Premium to Acquire American Lender Household," *Business Week Online,* November 18, 2002, Daily Briefing.

Affiliates and Assessment Areas

Currently, banks can choose whether to include the activities of their affiliates in their CRA evaluations. This is a holdover from an era when a vast majority of loans were made by depository institutions. With bank affiliates now making large numbers of loans, these affiliates must be included in CRA evaluations.
Many abusive loans we have seen have been made by Wells Fargo Home Mortgage, a non-depository affiliate of a bank. Banks cannot be allowed to behave one way with their depository institutions and another with their nondepository affiliates. 'Cherry picking' among affiliates, only including those that improve a bank's CRA performance, must end.

Similarly, with more loans being made through channels other than deposit-taking branches or ATMs, assessment areas of banks need to be expanded. They should include all areas in which a bank is making a substantial share of the lending market. A good standard would be 0.5% of the total loans made in a metropolitan standard area (MSA) or non-metro county. This would ensure a more accurate evaluation of a bank's activities under the CRA.

Conclusion

The CRA needs to be strengthened to ensure fair access to credit to all Americans. When 98% of banks are getting passing marks, yet our communities continue to be underserved or, in too many cases, exploited by financial institutions, something is wrong. We urge you to reject these proposed changes. It is time to go back to the drawing board and come up with new regulations that will really help our low- and moderate-income communities. Stronger curbs against predatory lending, including the practice of steering into the subprime market, retention of the current large institution threshold, and inclusion of affiliates and expanded assessment areas in examinations are all needed to create a more just and equitable banking system in this country.

Sincerely,

Maude Hurd
ACORN National President