

Action Requested Regarding Proposed Changes to CRA Rules

April 3, 2004

544

Docket No. 04-06
Communications Division
Public Information Room, Mail Stop 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

To Officials of Federal Bank and Thrift Agencies:

I have seen the beneficial effects of CRA, as intended when the initial legislation was implemented. As a concerned member of the public, I urge you to strengthen the Community Reinvestment Act (CRA) and avoid any actions that would dilute it.

In under-served sections of Dayton, Ohio (and I understand this has been true in communities across the nation), the CRA has directly served to increase access to homeownership, boost economic development, and expand small businesses in our minority, immigrant, and low- and moderate-income communities. Lending institutions have changed their practices to comply with the legislation, and in turn they are better serving their less-affluent depositors and communities.

I'm concerned that some of the proposed changes before you are contrary to the spirit of the CRA, and I believe they could reverse the progress made in community reinvestment.

Here are my specific recommendations:

1. Approve changes to expand collection and reporting for small-business and home lending.
2. Reject proposed changes to streamline and reduce exams for banks with assets between \$250 million and \$500 million.
3. Reject proposals for changes to CRA predatory-lending compliance standards.

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We should implement only CRA changes that would further restrict predatory lending, and that increase the ability of our general public to hold financial institutions accountable for compliance with consumer-protection laws. My comments are based not only on my witness of improved practices in my area (even representatives of local financial institutions admit they have improved to meet CRA provisions). We must set a climate to facilitate our Administration's goals to improve the economic status of immigrants and to create 5.5 million new minority homeowners by the end of the decade. *Your decisions clearly can help or hinder achievement of these goals!*

In addition, I ask you to update procedures to require financial institutions to report for all of their affiliates and assessment areas. I encourage you to make this a mandatory portion of the CRA, to eliminate selective reporting which can skew reporting and hide situations where financial practices do not meet the intent of the CRA legislation.

Enhance Data Disclosure

I support the proposal that the federal agencies 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. And I support the proposal to separately report purchases from loan originations on CRA exams, and to separately report high-cost lending (per the new HMDA data requirement starting with 2004 data).

I also ask that our federal agencies utilize the enhanced data to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use them to adjust weight on CRA exams for prime loans and high-cost loans, and for loan originations and purchases.

Eliminate Provision for Streamlined and Cursory Exams

I understand the goal to eliminate needless "red tape," but we must not reduce our ability to verify CRA compliance. Under current CRA regulations, large financial institutions 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, however, will eliminate the investment and service parts of the CRA exam for institutions with assets between \$250 million and \$500 million. Together more than 1,100 financial institutions in that category account for more than \$387 billion in assets.*

As an example, those institutions would no longer be held accountable on CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of safe and affordable rental housing needed by large numbers of immigrants and lower-income populations. *The track record of financial institutions prior to CRA convinces me that eliminating investment and service tests for more than 1,100 banks will considerably reduce access to banking services and capital for underserved communities.*

Similarly, those institutions would no longer be held accountable on CRA exams for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit-card services. Again, these actions would undermine the Administration's housing and community development programs. Moreover, by eliminating the investment and service tests, the federal bank agencies would eliminate its positive verification that financial institutions meet CRA statutory requirements to serve credit and deposit needs of their communities.

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Proposed Predatory Lending Standard is Inadequate

Under the proposed anti-predatory standard, CRA exams will allow abusive lending. Abusive lending would not lower CRA ratings when it strips equity without leading to a delinquency or foreclosure. For example, borrowers can have the necessary income to afford monthly payments, but they still can lose equity (wealth) as a result of a lender's excessive fees or unnecessary products. The standard does not address problems such as "packing" fees into loans, high prepayment penalties, loan flipping, mandatory arbitration, and other abuses.

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 in the bank's 'assessment area' as proposed by the agencies. The proposed standard can be used by financial institutions to avoid complete reporting and thus to avoid compliance with CRA's requirement for banks to serve low- and moderate-income communities.

Rigorous fair-lending audits and severe penalties for abuses (as found through CRA exams) are necessary to protect homeowners. The proposed predatory lending standard will not provide the necessary protections, and must be rejected in its proposed form.

Update CRA Exam Procedures

I'm concerned that the proposals under consideration have failed to close large loopholes in the CRA regulation. As noted, financial institutions still would have the choice whether or not to include affiliates on CRA exams. They can manipulate their CRA ratings by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. These games will end only if we require that all affiliates be included on exams.

Lastly, the proposed changes do not update the 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 would not be scrutinized by CRA exams.

The proposed data enhancements would become much more meaningful if you update procedures regarding assessment areas, affiliates, and the treatment of high-cost loans and purchases on CRA exams. CRA is simply a law that helps to improve access to capital for all Americans. CRA is vital and should be carefully strengthened, with common-sense actions as I noted above.

I thank you for your attention to this critical matter.

Sincerely,

Stephen J. Makovec

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