



Lawyers' Committee for Civil Rights Under Law

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April 6, 2004

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VIA FACSIMILE ONLY

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Docket No. 04-06
Communications Division
Public Information Room,
Mailstop 1-5
Office of the Comptroller of the
Currency
250 E St. SW,
Washington 20219
FAX (202) 874-4448

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution
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Washington DC 20551
FAX (202) 452-3819

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance
Corporation
550 17th St NW
Washington DC 20429
FAX (202) 898-3838

Regulation Comments, Attention:
No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington DC 20552
FAX (202) 906-6518

Dear Officials of Federal Bank and Thrift Agencies:

The Lawyers' Committee for Civil Rights Under Law ("the Lawyers' Committee") is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The Lawyers' Committee is committed to improving lending opportunities for minorities and holding lending institutions accountable for discriminatory practices. As such, the Lawyers' Committee is very concerned about predatory lending practices, which have disproportionately been targeted at minority and low-income communities stripping them of wealth and wreaking financial havoc. We believe that several of the proposed changes to the Community Reinvestment Act ("CRA") would lead to increased predatory lending. Accordingly, we urge that certain of the proposed changes, specifically those related to CRA exams and predatory lending standards, be withdrawn for the reasons set forth below.

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 are contrary to the CRA statute because they will halt the progress made in community

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reinvestment. Indeed, the proposed CRA changes would facilitate 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) provision of streamlined and cursory exams for banks with assets between \$250 million and \$500 million; 2) establishment of a weak predatory lending compliance standard under CRA; and 3) expansion of data collection and reporting for small business and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage imposed by the first two proposals. In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas in their proposal, and thus missed a vital opportunity to continue CRA's effectiveness.

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 elimination of the investment and service tests for more than 1,100 banks with over \$387 billion in assets translates into considerably less access to banking services and capital for underserved communities.

Predatory Lending Standard. The proposed CRA changes contain an anti-predatory screen that will actually 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, which disproportionately affects minority homeowners, 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.

Enhanced data disclosure. The federal agencies propose that they 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. Also the regulators propose 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). The positive aspects of the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data

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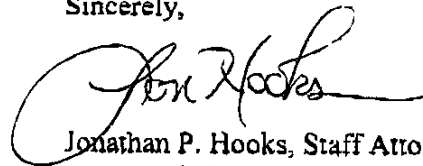
enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use the new data to provide less weight on CRA exams to high cost loans than prime loans and assign less weight for purchases than loan originations.

Missed Opportunity to Update Exam Procedures: The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams. Lastly, the proposed changes do not address the need to 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 will not be scrutinized by CRA exams.

The proposed changes to CRA will directly undercut the Administration's emphasis on minority homeownership and immigrant access to jobs and banking services. Indeed, the proposals regarding streamlined exams and the anti-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. CRA is simply a law that makes capitalism work for all Americans. CRA is too vital to be gutted by harmful regulatory changes and neglect.

Thank you for your attention to this critical matter. If you have questions regarding our comments, please do not hesitate to contact me directly at (202) 662-8326.

Sincerely,



Jonathan P. Hooks, Staff Attorney
Housing & Community Development Project

cc: National Community Reinvestment Coalition