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 Chief Counsel's Office
 Office of Thrift Supervision
 1700 G Street, NW
 Washington, DC 20552

March 30, 2004

To Whom It May Concern:

The National Community Capital Association appreciates the opportunity to comment on the Joint Notice of Proposed Rulemaking regarding the Community Reinvestment Act (CRA) [69 FR 5729].

National Community Capital strongly supports an effective, well-enforced Community Reinvestment Act that keeps pace with the changing financial services industry. Our comments reflect a commitment to a community development finance industry in which banks and community development financial institutions (CDFIs) are important partners in expanding access to capital and credit.

While we commend your efforts regarding the expansion of data collection, the other two proposed changes—definition of "small banks" and predatory lending standards—will undermine the intent of the law in providing equitable lending in underserved communities. National Community Capital cannot support these proposals in their current form and we strongly urge you to withdraw the proposed definition of small banks and expand the predatory lending standards, as well as include additional provisions to bring CRA in line with changes in the financial services industry.

Since its passage in 1977, and especially since the last significant revisions in 1995, CRA has greatly increased the flow of capital to low-income people and communities. Because of CRA, banks and other financial institutions often partner with community development financial institutions to successfully enter new markets that were previously ignored or "redlined." These communities have reaped benefits, not only from the growth in CRA-motivated capital, but also from the partnerships between banks and CDFIs. Both banks and CDFIs have realized that working in partnership can enhance both institutions' effectiveness in reaching underserved markets. The Community Reinvestment Act has played a key role in this effective collaboration, fostering millions of new homeowners, thriving businesses, and accountholders.

National Community Capital is concerned that the provisions of the Proposed Rule will undermine the success of the last twenty-five years of community reinvestment and will curtail the flow of capital into underserved communities. This letter comments on three main aspects of the Proposed Rule: 1) the definition of "small banks;" 2) inclusion of a predatory lending standard; and 3) additional data reporting and disclosure. This letter also offers two ways that CRA could be further enhanced.

Change in the Definition of "Small Banks"

The agencies propose to make approximately 1,100 banks subject to less rigorous CRA exams by changing the "small bank" limit from \$250 million to \$500 million. National Community Capital respects the agencies' effort to minimize regulatory burden and to adjust the definition to keep up with inflation. However, bank investments represent an important way to increase access to capital in low-income communities. The successful partnerships

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between CDFIs and banks, including those which result in Bank Enterprise Award program awards^[1], illustrate that investment opportunities are available and can be part of a bank's strategy for community reinvestment, regardless of size. For example, between 1999 and 2001, 11% of BEA awardees were institutions with assets between \$250 and \$500 million. These partnerships indicate that investment opportunities are available for banks of all sizes and in markets across the country. The proposal would particularly impact rural communities, where the number of institutions subject to complete CRA exams would decline by an estimated 73%.

Further, the change that designates a bank "small" without regard to whether it is part of a large holding company further reduces the financial services assets subject to CRA provisions, bringing the Act even further out of step with the "modernized" financial services industry and would release more than \$387 billion in assets from CRA examination. Underserved communities will have far less access to banking services and capital. National Community Capital strongly urges you to withdraw this proposed change from consideration to ensure continued inclusion of "investment" and "service" tests in the CRA exams of a maximum number of banks.

Predatory Lending Standards

The provisions regarding predatory lending standards in the proposal are insufficient to protect consumers from abusive lending and could actually perpetuate the practice. The proposal rightly targets loans made without regard for the borrower's ability to repay, but fails to incorporate other instances of predatory practices, including fee packing, prepayment penalties, and loan "flipping." Without a comprehensive standard, the inclusion of anti-predatory provisions into CRA becomes nearly meaningless and, in fact, could allow CRA ratings to cover up for abusive practices.

A rigorous predatory lending standard would protect new homeowners created by the Administration's initiatives, but this proposal falls short of providing that protection. The Rule should contain a comprehensive, enforceable provision to consider abusive practices and assess CRA compliance accordingly, and it must apply to ALL loans made, not just loans secured with real estate. In addition, any bank partnering with a payday lender should have its CRA rating negatively affected by this practice. National Community Capital recommends that this proposal be strengthened significantly, and that the agencies develop a more meaningful plan to stop predatory lending.

Enhanced Data Disclosure

The Proposed Rule includes two new provisions for expanded data collection and disclosure. National Community Capital believes that these proposals will improve access to affordable capital. The Home Mortgage Disclosure Act (HMDA) has contributed significantly to reducing discrimination in housing finance, and similar disclosure for small business lending can help ensure fair and equal access to credit for small businesses.

Separate reporting of high cost loans and of loan purchases will better measure banks' service to low-income consumers. The agencies should use this new data in assigning CRA ratings. Banks should receive more credit for loan originations than for purchases, and for prime (or the equivalent for business loans, when that data is available) loans versus high-cost loans. Using the data in this way will ensure that banks are directly providing affordable credit in their markets. National Community Capital applauds the efforts of the agencies to expand its data collection, and urges inclusion of this provision in the Final Rule, but is concerned that the damage done by declining bank investment and a weak predatory lending standard will overshadow the benefits of this change.

Missed Opportunities to Enhance CRA and Community Reinvestment

The 1999 Gramm-Leach-Bliley Act "modernized" the financial services industry without commensurate reform to community reinvestment requirements. In order for CRA to keep pace with the financial services industry, two important reforms are necessary.

1. **Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy.**

After passage of the 1999 Gramm-Leach-Bliley Act, banks became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans—especially in the subprime markets. The change in "small banks" in the proposed rule, which does not differentiate between stand-alone banks and banks that are part of large holding companies, exacerbates this trend.

However, CRA covers only banks, and therefore only a fraction of a financial institution's lending. To keep CRA in step with financial reform, it should be extended to all financial services companies that receive direct or indirect taxpayer support or subsidy.

In the paper, "The Parallel Banking System and Community Reinvestment," National Community Capital uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety-net against some nonbank insolvencies. In October 1998, the Federal Reserve Board drove this point home convincingly when it intervened to structure a massive bailout of Long Term Capital Management by several taxpayer-subsidized banks.

National Community Capital strongly urges regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams, and that small banks that are part of large holding companies not be treated as small banks. This change would accurately assess the CRA performance of banks that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers.

2. **A bank's assessment area should be determined by how a bank defines its market.**

Under CRA, banks are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2004, banks no longer just accept deposits, they market investments, sell insurance, issue securities and are rapidly expanding the more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas have been typically defined.

Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate. Moreover, it disregards the spirit of the CRA statute, which sought to expand access to credit by ensuring that banks lent to their entire markets.

National Community Capital recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

Conclusion

The Community Reinvestment Act has channeled billions of dollars into underserved markets and fostered new, productive partnerships between banks and community organizations. The regulators must not roll back these gains in providing access to capital. Improved and enhanced data disclosure is an important step, but other aspects of the proposal threaten the expansion of capital and credit in underserved communities. National Community Capital urges you to:

- Maintain an investment test as part of banks' CRA performance by maintaining the current "small bank" definition.
- Continue to hold banks that are part of large holding companies to the "large institution" standards.
- Institute a strong, comprehensive predatory lending standard and ensure that abusive lending counts

against an institution's CRA rating.

- Expand CRA so that it better reflects changes in the financial services industry brought about by market shifts, technology advances, and financial modernization legislation.

Thank you for the opportunity to comment. If you would like additional information or have questions about this letter, please do not hesitate to contact me at 215.320.4304 or markp@communitycapital.org.

Sincerely,

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[1] The Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) administers the Bank Enterprise Award Program (BEA), which provides incentives to insured depositories to increase their investment in underserved communities; a primary way that award recipients accomplish these goals is through investments in CDFIs.