Evans, Sandra E

From: Jordan Hamory [hamory@cdfi.org]
Sent: Monday, April 05, 2004 10:55 AM
To: regs.comments@ots.treas.gov
Subject: Attention No. 2004-04, CRA Regulation Comments

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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 Street, SW
Washington, DC 20219

Docket No. R-1181
Ms. Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Attention: Comments
Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

April 6, 2004

To Whom It May Concern:

The Coalition of Community Development Financial Institutions (CDFI Coalition) appreciates the opportunity to comment on the proposed revisions to the regulations implementing the Community Reinvestment Act (CRA). The CDFI Coalition represents a national network of 1,000 community development financial institutions providing capital and credit in economically distressed rural and urban communities in all 50 states. A listing of our member organizations is enclosed for your information.

CDFI partnerships with mainstream institutions are vital to maximize the availability of financial services and credit in America's disinvested neighborhoods. CRA has been instrumental in facilitating these partnerships and providing community-based and community-run financial institutions access to mainstream sources of capital, primarily through the large bank Investment test. Unfortunately, both the proposed changes to the definition of "small banks" and the proposed predatory lending standards threaten to both significantly diminish mainstream financial institutions' investments in and partnerships with CDFIs, as well as tear down and drain assets from the very markets that CDFIs are working hard to build.

The CDFI Coalition feels that the proposed changes to the CRA regulation will significantly roll back policy essential for community reinvestment. We urge you to reject the proposed change to the definition of small banks and strengthen the proposed predatory lending standards.

Small Bank Limits

Under the current CRA regulations, large banks with assets of at least $250 million are evaluated under a three-part test that scrutinizes their level of funding, investing, and services to low- and moderate-income communities. The Investment part of this tripartite examination provides banks a favorable rating for their investments in community development financial institutions. These partnerships with mainstream financial institutions are an important source of capital for CDFIs, and provide support for the affordable housing and community facilities financing, homeownership and mortgage assistance, small business lending, retail financial services and products, and financial literacy training and technical assistance that CDFIs provide in low-income communities. The CDFI Data Project estimates that 18% of all CDFI debt capital, shares, and deposits come from mainstream banks, thrifts, and credit unions. When the subset of community development loan funds is considered, this figure jumps to 39%-[1]-the *largest* portion--of their debt capital, shares, and deposits.

Changing the definition of small banks to include all institutions with less than $500 million in assets regardless of holding company size will severely diminish many banks' regulatory incentive to invest in CDFIs. Over 1,100 banks will now be subject to a streamlined CRA examination that does not include a separate Investment test. Consequently, residents of low income neighborhoods served by CDFIs will see a decrease in their access to financial services, capital, and credit. This diminished investment will be particularly felt in small cities and rural areas where the number of institutions covered by the comprehensive CRA exam is estimated to decline by nearly 73%.[2] A majority of CDFIs, 59%, serve low income populations in small cities and rural areas.[3] In these already struggling communities, banks will be less compelled to provide support to CDFIs for their innovative investment opportunities and services.

Predatory Lending Standards

The proposed predatory lending standard is insufficient to protect consumers from abusive lending and may actually perpetuate the practice. The proposed standard states that loans based on the foreclosure value of collateral, rather than the borrower's ability to repay, can negatively affect a bank's CRA exam. This standard misses numerous predatory practices such as packing exorbitant fees onto mortgage loans, loan flipping, charging high prepayment penalties, and mandatory arbitration that can strip equity from homeowners and trap borrowers in abusive loans. These practices prey upon the very low-income customers that CDFIs are trying to serve, and further reduce the limited assets of distressed communities.

Of particular concern, many small banks are facilitating payday lending in states where payday lending is illegal by "renting" their charter to the payday lenders. **In such cases of charter abuse, designed to circumvent state law, the partnering banks should have their CRA rating negatively affected**

regardless of the bank's size. Bank participation in payday lending is unseemly at best. A bank's CRA rating should reflect that behavior.

Data Disclosure

The CDFI Coalition supports additional data disclosures in CRA exams. Reporting the census tract location of an institution's small business loans will allow for greater understanding of how banks serve traditionally underserved communities, and help CDFIs identify opportunities in low-income communities where their services are needed to fill the gaps in the services offered by mainstream institutions. However, the benefit of this additional data is partly offset by the loss of data for banks that would be considered "small" under the new criteria. These lenders are significant providers of small business loans; therefore excluding them will create a significant gap in the data collected.

Likewise, adding data to CRA exams that differentiates between the share of bank and affiliate loans that are originated and purchased and those which are high interest rate and HOEPA loans is a positive step. However, the regulators must not merely require banks to 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 Opportunities to Enhance CRA and Community Reinvestment

Regulators missed a significant opportunity to modernize CRA by not requiring affiliate lending to be considered in CRA exams. As bank holding companies increasingly use non-depository affiliates such as insurance agents and other non-traditional loan officers to originate mortgages and other loans, it is critical that all lending affiliates be required to report lending in an institution's CRA exam. These affiliates represent a significant source of potential investments in low-income communities. As currently stated, CRA allows banks to manipulate their CRA exams by excluding affiliates not serving low- and moderate- income borrowers and excluding affiliates engaged in predatory lending. In order to strengthen community reinvestment, it is critical that this loophole be closed and all lending affiliates be considered in CRA exams.

Additionally, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches. As technology and regulatory policy has advanced to allow financial institutions to conduct business through channels other than traditional bank branches, CRA has not advanced with it. Many banks make considerable portions of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams. Updating assessment area criteria would facilitate bank partnerships with CDFIs in all communities where banks do business and expand the availability of capital and credit to more underserved Americans.

Conclusion

The CDFI Coalition supports an effective, well-enforced Community Reinvestment Act. CRA has spurred billions of dollars of bank investment in low income communities and fostered valuable partnerships between banks and CDFIs. We applaud the regulators for maintaining the Investment test for large institutions and requiring additional data disclosure on CRA exams. However, we fear that these positive steps forward will be overshadowed by the aspects of the proposal that reduce the number of smaller banks subject to the Investment test and establish weak predatory standards. In order to ensure that the CRA maximizes its effectiveness and keeps pace with changes to the financial service industry, we urge you to:

- Maintain the investment test for the over 1,100 banks with assets between $250 and $500 million by preserving the current definition of small bank.

- Enact strong predatory lending standards, and at a minimum deduct points on CRA exams for banks partnering with payday lenders.
- Expand and modernize CRA to include all bank affiliates. Update assessment areas to include geographical areas beyond bank branches.

Thank you again for the opportunity to submit comments on the proposed revisions to CRA regulations. Please feel free to contact me at vasiloff@cdfi.org or 703-894-0475 to further discuss the CDFI Coalition's comments.

Sincerely,

Jennifer A. Vasiloff
Executive Director

Enclosure: CDFI Coalition Member Organizations

CDFI Coalition Member Organizations and Board of Directors

Association for Enterprise Opportunity *Michelle Levy-Benitez, Research and Policy Manager ▪ Arlington, VA*
The national trade association representing microenterprise development programs.

Community Capital Bank *Gina Bolden Rivera, Senior Vice President ▪ Brooklyn, NY*
A New York City-wide community development bank.

Community Development Venture Capital Alliance *Kerwin Tesdell, President ▪ New York, NY*
A certified CDFI intermediary that serves community development venture capital funds through training, financing, consulting, research, and advocacy.

First Nations Oweesta Corporation *Elsie Meeks, Executive Director ▪ Kyle, SD*
A certified national Native CDFI intermediary that brings together CDFIs serving Native (Native American, Alaskan Native and Native Hawaiian) communities and reservations through research, training, technical assistance and investments.

National Community Capital Association *Mark Pinsky, President and CEO ▪ Philadelphia, PA*
A national membership network that finances, trains, consults with, and advocates for CDFIs.

National Community Investment Fund *Lisa Richter, Fund Advisor ▪ Chicago, IL*
A certified CDFI channeling equity, debt and information to locally-owned banks, thrifts and selected credit unions with a primary purpose of community development.

National Congress for Community Economic Development *Carol Wayman, Policy Director ▪ Washington, DC*
A national group representing community development corporation-based lenders and investors.

National Federation of Community Development Credit Unions *Cliff Rosenthal, Executive Director ▪ New York, NY*
A certified CDFI intermediary that serves more than 200 low-income credit unions across the USA

Self-Help *David Beck, Policy Director ▪ Durham, NC*
A North Carolina-based CDFI accepting deposits and providing loans to small businesses, non-profits, and homeowners nationwide.

Shorebank Corporation *Fran Grossman, Executive Vice President ▪ Chicago, IL*
The holding company for community development finance interventions in Chicago, Cleveland, Detroit, Upper Peninsula Michigan, and the Pacific Northwest which provides, on a domestic and international basis, advisory relationships.

Southern Development Bancorporation *Joe Black, Vice President ▪ Arkadelphia, AR*
A community development bank holding company servicing rural Arkansas and the Mississippi Delta.

Woodstock Institute *Malcolm Bush, President ▪ Chicago, IL*
A policy, research, and technical assistance organization specializing in community development lending, community reinvestment and economic development.

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[1] FY 2002 survey results of 442 CDFIs conducted by the CDFI Data Project.

[2] Source FDIC Institution Directory. Current as of February 2004.

[3] FY 2002 survey results of 442 CDFIs conducted by the CDFI Data Project.