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LISC

April 6, 2004

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

Re: Community Reinvestment Act

To Whom It May Concern:

Local Initiatives Support Corporation (LISC) appreciates the opportunity to comment on proposed changes to the rules implementing the Community Reinvestment Act. CRA has been indispensable to bringing capital into low-income communities. We agree that the current CRA rule is fundamentally sound, and we appreciate the constructive and responsible way in which the regulators have sought to make CRA effective and responsive to communities.

Investment Test

We are disappointed that the regulators decided not to create a community development test that would combine investments with community development lending and services. For many reasons we expressed in our response to the ANPR, we believe that approach would rationalize examination of a bank's overall community development activities and accommodate the needs of different low-income communities.

However, we do appreciate the regulators' invitation for comments for improving implementation of the investment test within the structure of the current rule. Our 2001 response to the ANPR discusses the issue at some length. More specifically, we recommend that:

- The regulators should affirm that qualitative factors should carry substantial weight within the investment test, in addition to the quantity of investments. The regulators should clarify that investments that are especially responsive to a community's needs, that reach into especially distressed or economically isolated communities, and that fill gaps in the availability of financing should receive more credit than others. How an investment addresses a community's needs should be more important than its form. Innovation and complexity will often be necessary means to address a community's most important needs, and in such cases they should be recognized for that, but they should not be ends in themselves. A complex investment that is unresponsive to community needs should receive less recognition than an investment that is simple but truly adds value. In some cases, an institution can best meet a community's needs by working through CDFIs or other intermediary organizations. These intermediaries often take on activities that add real value to communities and it is more effective for all partners that the intermediary assumes responsibility for the innovative, complex, and sometimes risky aspects of the activity. Such investments should be considered based on their community impacts. The goal should be to improve communities, not to make doing business harder or easier for institutions.

- The regulators should provide guidance that institutions should receive full recognition for investments outside an assessment area but within the broader region that includes the assessment area, provided that the institution is adequately serving its assessment area. This standard is somewhat similar to the one for wholesale and limited purpose banks. It ensures that the assessment area's needs are addressed first, but then offers full recognition for investments elsewhere within the region. The examiner's current discretion to grant less recognition for regional investments can discourage them by creating substantial doubt among institutions at the time they make investment decisions. This moment may be two to three years before the investment is closed and the next CRA examination occurs. This uncertainty is a significant and unnecessary obstacle that regulators could remove easily within the framework of the current rule. Again, the degree to which the investment adds value to a community, not its location within the assessment area, should determine how much credit the institution should receive.

Small/Large Institution Threshold

LISC is greatly concerned that raising the threshold between small and large institutions from $250 million to $500 million could substantially and adversely affect many rural communities. We are disappointed that the regulators did not analyze the likely impact of this proposal on communities in the two years between the close of the ANPR comment period and the date of this proposal. We understand that such an analysis is now under way and urge the regulators not to proceed with this proposed change if it would adversely affect a significant number of communities.

We especially urge the regulators to consider the impact on rural communities. In many rural areas, it is our understanding that institutions with assets between $250 million and $500 million comprise a substantial share of the market, and that low-income households comprise a substantial share of these communities. Because low-income households are often less geographically concentrated in rural areas than in urban areas, it is important that the regulators recognize that rural areas without large "pockets of poverty" may have many low-income households who would benefit from lending, investment, and services. Many rural areas are broadly and chronically distressed. For example, the upper plains states have suffered from out-migration, while the Mid-South Delta and Appalachia have high poverty rates. Under such conditions, distress may be geographically pervasive rather than concentrated.

Compounding this problem is that rural areas appear not to receive much attention within the CRA exam process for very large institutions. For institutions serving multiple regions or states, examiners tend to focus on their large metropolitan assessment areas. While understandable, this approach tends to overlook rural areas. Seen from many rural areas, the proposal to raise the small/large bank threshold means that CRA will effectively hold accountable neither very large nor relatively small institutions, significantly reducing CRA's overall relevance in those areas. For this reason, we believe the regulators should consider how CRA could be better implemented in rural areas.

Adverse Consideration of Abusive Lending

We appreciate the regulators' recognition that abusive but legal lending activities of an institution should adversely affect its CRA rating. Otherwise, such abusive activities would perversely improve the CRA rating. We also agree that abusive lending activities should be considered even if they occur outside an institution's assessment area. We further agree that asset-based lending is inherently abusive.

However, we are concerned that treating only asset-based lending as abusive would be a mistake. There are various other abusive but legal practices at work in the market today – for example, loans with short terms and high fees may strip a borrower's equity and require refinancing on disadvantageous terms, even if the loans are not solely asset-based. Moreover, the marketplace is rapidly evolving, and new abusive practices may develop quickly. It has been nine years since the CRA rule was last revised, and almost three years since the current rulemaking process began. To establish a rigid and narrow rule on abusive lending seems shortsighted and easy to circumvent, especially since it may be many years before the next CRA rule revisions.

In addition, there is a significant risk that sanctioning only asset-based lending could create a *de facto* safe harbor; other abusive activities would not adversely affect an institution's CRA rating. This interpretation would turn the worthy intent of the rule on its head. Instead of curtailing abusive lending broadly, it would leave open the door to new abusive practices even while closing the door on one kind of abusive lending. While curtailing asset-based lending would be a step in the right direction, it should not be the only step for many years to come.

We believe a better approach would be for the rule to establish the principle that an institution's abusive lending will adversely affect its CRA rating, and that the regulators will establish less formal guidance (such as through inter-agency Questions and Answers) on what kinds of lending are abusive. The regulators should then provide immediate such guidance that asset-based lending is abusive and begin to consider other forms of abusive lending.

Affiliate Lending

We are pleased that the regulators propose to clarify that discriminatory or other illegal or abusive lending activities by an affiliate of an institution would adversely affect its CRA rating. However, we do not believe that such activities should be considered only when undertaken within the institution's assessment area. We note that legal but abusive asset-based lending by the institution itself outside an assessment area would adversely affect its CRA rating. Consistency suggests that the same standard should apply to affiliate lending. We also note that affiliate lending is considered under CRA only if the institution elects to include it. If an institution decides to make such an election, then it is reasonable that the complete lending record of the affiliate should be considered. Regulators should not disregard discriminatory and other illegal or abusive lending for CRA purposes merely because it occurs outside an assessment area.

Small Business and Small Farm Loan Data

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We support the regulators' proposal to release small business and small farm lending data on a geographical basis. We believe that such data will be useful to communities and to other institutions in assessing the adequacy with which institutions are serving their communities. We believe the proposal appropriately balances the benefits to the public with any risk of unwarranted disclosure of otherwise private information.

Conclusion

This concludes our comments. We would be happy to address any questions you may have.

Sincerely,

Benson F. Roberts
Vice President for Policy

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