Evans, Sandra E

From: Dawn Moskowitz [dmoskowitz@vdcu.org]
Sent: Thursday, March 25, 2004 9:59 AM
To: Office of Thrift Supervision
Subject: Interagency Notice of Proposed Rulemaking, Community Reinvestment Act

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Dawn Moskowitz
112 Hayward Street
Burlington, VT 05401

March 25, 2004

Office of Thrift Supervision
Chief Counsel's Office, OTS
1700 G Street, NW
Washington, DC 20429

Dear Thrift Supervision:

Docket No. 04-06
Office of the Comptroller of the Currency

Docket No. R-1181
Board of Governors of the Federal Reserve System

Attention: Comments
Federal Deposit Insurance Corporation

Regulation Comments
Office of Thrift Supervision

To Whom it May Concern:

[NAME OF ORGANIZATION] appreciates the opportunity to comment on the Joint Notice of Proposed Rulemaking regarding the Community Reinvestment Act (CRA) [69 FR 5729].

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. We 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.

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. The long history of partnership between banks and CDFIs indicates that investment opportunities are available to banks of all sizes and in all regions. The proposal would particularly impact rural communities, where the number of institutions subject to complete CRA exams would decline by an estimated 73%.

We 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. We recommend 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. We believe 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.

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." 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.

We strongly urge 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.

We recommend 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. We urge 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.

Sincerely,

Dawn Moskowitz