Leadership Council for Metropolitan Open Communities

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April 5, 2004

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

Re: Opposition to Proposed Changes in CRA

Dear Chief Counsel,

I am writing from the Leadership Council for Metropolitan Open Communities in Chicago to comment on the proposed changes to the regulation of the Community Reinvestment Act. The Leadership Council is a private, non-profit fair housing organization that works to eliminate patterns of segregation and discrimination in the metropolitan Chicago area. We were founded in 1966 as a direct product of the Chicago Freedom Movement campaign for open housing led by Dr. Martin Luther King, Jr. and other civil rights leaders.

Since our founding, we have fought against redlining, discrimination and predatory lending. We have also invested a tremendous amount of energy into working with banks to promote investment in minority and low- and moderate-income communities, develop innovative products and services, and stand with us against abusive practices. The Community Reinvestment Act is an important tool for low- and moderate-income communities. We feel that but for a strong CRA, the level of investment in our communities would be far less than what we see today. **The proposed changes to the CRA regulation significantly threaten continued or new community reinvestment by small and midsize banks. Further, the proposed changes fail to close loopholes and modernize the CRA regulation.** We thus would call on the Office of Thrift Supervision not to adopt the proposed changes and to implement instead specific improvements outlined below.

Small Bank Limits

The proposed CRA regulation would change the definition of "small bank" from any institution *with less that $250 million in assets and not part of a holding company with over $1 billion in assets* to include *all institutions with less than $500 million in assets regardless of holding company size*. This change will dramatically increase the number of banks considered "small" that, for CRA purposes, are examined under the streamlined small bank CRA examination. This exam, as you know, does not evaluate banks for their levels of community investment and services.

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This change will disproportionately effect rural communities and small cities where smaller institutions have significant market share. In Illinois, it will reduce the number of institutions covered by the comprehensive CRA exam by 63 percent, from 198 banks to 74. However in rural areas or small cities, the number of institutions covered by comprehensive CRA will decline by nearly 73 percent. In these communities, many of which are already struggling from recent and historic disinvestment decisions, banks will have less incentive to provide innovative investment opportunities and services to community residents.

By removing the holding company threshold from the definition of small bank, regulators will create a loophole for large holding companies seeking to legally evade compliance with the spirit of CRA. Under the proposed changes, large holding companies will likely re-constitute their banking subsidiaries as a series of local "small banks" to avoid comprehensive CRA examinations. A bank like Harris Trust and Savings, which currently has 26 separately chartered institutions in the Chicago area totaling over $30 billion in assets, would find that 19 of its institutions would be considered "small" under the new CRA regulation despite being part of Bancmont Financial Corp, a holding company with over $39 billion in assets in the United States. Of those Harris institutions not covered, at least three serve communities with significant low-income or minority populations.

Affiliate Lending and Assessment Areas

Regulators also are forgoing a significant opportunity to modernize CRA by not requiring affiliate lending to be considered in CRA exams. As bank holding companies increasingly use non-bank lenders to originate mortgages, it is critical that all lending affiliates be required to report lending in an institution's CRA exam. As currently structured, the CRA regulation allows banks to choose which affiliate loans in a given assessment area they want to apply toward the lending test. This allows institutions to cherry pick the best lending affiliates for each assessment area and exclude affiliates in assessment areas where those affiliates might not be adequately serving the community. As holding companies increasingly acquire non-bank lenders, including subprime lenders, it is critical that regulators close this loophole and that all lending affiliates be considered in CRA exams.

Additionally, we were disappointed to see that there was no change to how assessment areas are considered. As technology and regulatory policy has advanced to allow financial institutions to conduct business through channels other than traditional branches, CRA has not advanced with it. For example, a recent publication of the Woodstock Institute, a leading CRA watchdog, shows that insurance banks conduct over 75 percent of their lending outside of their CRA assessment areas. None of this lending is considered in these institutions' CRA exams and there is no accountability to ensure that these banks are making loans in low- and moderate-income communities or to minorities that might otherwise benefit from this lending activity.

Predatory Lending Standard

Regulators also missed a significant opportunity to make a strong statement about predatory lending. The proposed standard allows that loans originated based on foreclosure value of collateral rather than borrower 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. Regulators should apply a strong predatory lending standard to bank loans and to loans made by affiliates.

Data Disclosure

We welcome additional data disclosures on CRA exams, but feel the data need to be more fully considered in evaluations to be truly effective. Specifically, we support adding data to CRA exams to differentiate between the share of bank and affiliate loans that are originated and purchased and those which are high interest rate and HOEPA loans, but these loans should not be weighted equally. Originated, lower interest rate, and non-HOEPA loans should be given more weight. The purpose of CRA is to stimulate conventional lending in underserved areas; allowing banks to boost CRA performance by purchasing loans, particularly loans that may not be in the best interest of the borrower, runs counter to the intent of CRA.

The Leadership Council appreciates the opportunity to comment on these proposed changes and looks forward to continuing our work ensuring that banks have the incentives and the encouragement to invest in underserved low- and moderate-income communities.

Sincerely,

Brian C. White Jr.
Brian C. White

Director for Community Relations and
Chair, Chicago CRA Coalition Housing Task Force