United States Senate
WASHINGTON, DC 20510

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May 17, 2004

The Honorable Alan Greenspan
Chairman, Federal Reserve Board of Governors
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Community Reinvestment Act Regulations

Dear Chairman Greenspan:

We are writing to express our strong opposition to the recently published interagency proposal revising the Community Reinvestment Act (CRA) regulations. This proposal dramatically weakens the effectiveness of CRA, develops a weak predatory lending compliance standard, and will have a negative impact on economic development and access to low-cost services in low-and moderate-income neighborhoods across our nation. We urge you to withdraw this proposal.

CRA was enacted to encourage federally-insured financial institutions to meet the credit needs of the communities they serve, especially low- and moderate-income communities. Prior to CRA, many financial institutions failed to provide appropriate credit opportunities to all the communities they served. The cost of denying private mortgage credit and business lending to low-and moderate income neighborhoods was devastating. In too many neighborhoods, property values and business activity plummeted over time while crime and poverty escalated. Since 1977, CRA has been critical to increasing access to homeownership and expanding access to capital which have improved the economic status of millions of Americans across the nation. It is estimated that since the inception of the CRA, banks and thrifts have made more than $1 trillion in loan pledges to low- and moderate-income areas.

The 1995 revisions to the CRA regulations strengthened the law by emphasizing performance over process, adopting a comprehensive examination of a bank's lending, investment and service activities, and addressing the regulatory burdens of the smallest institutions. These changes have led to increased investment in distressed communities and breathed new life into low- and moderate-income neighborhoods across the United States. Unfortunately, the current proposed regulations, if adopted, will likely undo much of the progress that has taken place since 1995 by reducing the obligation of institutions to invest in low- and moderate-income communities and by failing to ensure that CRA remains relevant in the changing financial services arena.

Revision of the "Small Bank" Definition

We believe the 1995 regulatory revisions properly addressed the regulatory burdens imposed on the smallest institutions and oppose the current proposal to amend the regulatory definition of "small institution" to include banks and thrifts with up to $500 million in assets without regard to any holding company assets. The proposed change will greatly diminish the obligation of more than a thousand CRA regulated institutions to meet the convenience and needs of their communities and is in conflict with the most recent legislative definition of small institution contained in the 1999 Financial Services Modernization Act. Congress grappled with the issue of small banks that year and agreed that $250 million was the appropriate point to divide small institutions from large institutions.

Under the current CRA regulations, a "small institution" is defined as having less than $250 million in assets and not affiliated with a holding company that has at least $1 billion in assets. Increasing the threshold from $250 to $500 million in assets as well as eliminating the holding company limitation for small banks would cut in half the number of banks and thrifts subject to the large retail institution CRA performance test developed under the 1995 regulations. More than 1,100 additional banks and thrifts with approximately $384 billion in assets will be allowed to receive a streamlined CRA examination which focuses solely on lending and does not seek information concerning investment and service to the community. Further, the CRA lending examination will be far less stringent than under current requirements.

We are concerned that the proposed regulation would eliminate the responsibility of many banks to invest in the communities they serve through programs such as the Low Income Housing Tax Credit or provide critically needed services such as low-cost bank accounts for low- and moderate-income consumers. This is especially true for rural areas where access to financial services is already limited. Moreover, the proposed change would limit the amount of small business, small farm and community development lending data which is critical to determining whether every American is receiving equal access to financial services. Under the proposal, fewer than 12% of banks will be required to report such lending or be responsible for investing or providing services to low- and moderate-income communities.

We are particularly disturbed that the agencies have proposed this change without undertaking an independent study of the regulatory burdens and costs associated with the large bank examination compliance or an analysis of the community impact of banks exempted from providing certain lending data or undergoing the service and investment tests. It is difficult to believe that a small bank that is part of a sizable bank holding company structure finds addressing its CRA responsibilities "no less burdensome than does a similarly-sized institution without a sizable holding company." We urge you to retain the current threshold for the streamlined examination.

Predatory Lending Standard

We are concerned about recent increases in predatory mortgage lending that threaten to undermine efforts to revitalize neighborhoods and expand homeownership opportunities across the nation and agree that a bank's CRA rating should be adversely affected if it engages in predatory lending practices. However, we oppose the proposal to incorporate an inadequate predatory lending standard into the CRA regulations.

Responsible sub-prime lending to borrowers who are considered greater credit risks has allowed millions of Americans to refinance their homes and become part of the economic mainstream. Unfortunately, too many Americans continue to be victimized by equity stripping activities. The proposal contains a useless and harmful standard for determining predatory lending and could actually result in an increase in abusive lending practices. A bank or thrift's CRA evaluation would only be adversely effected if the institution made loans based predominantly on the foreclosure or liquidation value of the home rather than on the ability of the borrower to repay the loan. The predatory lending standard does not address other serious and more common equity stripping abuses by lenders that have been identified by the bank regulatory agencies, the Department of the Treasury, and the Federal Trade Commission. These include packing of high fees into mortgage loans, high prepayment penalties, balloon payments, loan flipping, and mandatory arbitration. This proposal would give the appearance of holding financial institutions accountable for predatory practices while in fact allowing them to continue their predatory lending abuses. We urge you to withdraw this proposed revision.

Discriminatory and Abusive Credit Practices by Affiliates

We believe that discriminatory and abusive credit practices by affiliates should adversely impact a bank or thrift's CRA rating. Unfortunately, the proposed rule will at best result in a marginal increase in oversight of affiliate lending practices. The proposal would amend the CRA regulations to provide that an institution's CRA rating will be adversely affected by evidence of discriminatory or other abusive credit practices by an affiliate, if and only if, the bank elects to have at least one of its affiliates considered for the CRA evaluation and if the affiliate's loans are made in a bank's assessment area. It does little to further limit a bank's ability to shield abusive lending by affiliates from CRA review.

It is our understanding that under existing regulatory practice when a bank elects to have one of its affiliate's lending lines (i.e. mortgages) considered for CRA evaluation, similar lending lines (i.e. mortgages) by all other affiliates in the bank's assessment area will be included. The proposed rule would merely expand the CRA evaluation to include all other lending lines (i.e. credit cards and consumer lending) in the bank's assessment area. A bank may continue to immunize its affiliates from review by merely electing not to include any affiliate in the review.

More importantly, under this proposal, it will remain possible for a bank to receive an "Outstanding" CRA rating even if one or more of its lending affiliates have engaged in abusive and predatory lending activities outside of the assessment area.

In order to be meaningful, the proposal would have to also mandate the inclusion of all affiliate lending outside of the assessment area. This will allow regulators to more accurately assess the CRA performance of a bank within a holding company that conducts significant lending through other nondepository lending entities.

Enhanced CRA Disclosure Statement

We believe that the proposal to enhance the detail of the information contained in the CRA Disclosure Statement that agencies prepare for an institution's public file would be a positive step. Under the proposed regulation, the CRA Disclosure Statements will contain the number and amount of an institution's small business and farm loans by census tract. According to data from the Federal Financial Institutions Examination Council (FFIEC), CRA reporting lenders made more than $38 billion in small business loans and approximately $2.4 billion in small farm loans in low- and moderate-income communities in 2002. However, much more needs to be done. The disaggregated information will be critical to helping regulators and the public assess whether a particular bank or thrift is meeting its CRA obligation to serve all of the communities where it is located. We believe that the proposed revisions properly balance the benefits of public disclosure against any risk of unwarranted disclosure of otherwise private information. We agree that the risk of revealing private information about small-business and small-farm borrowers is likely very small and outweighed by the public benefit of the data.

However, we are disappointed that the proposed regulation does not similarly require disclosure of the number, amount of, or purpose of an institution's community development lending by census tract. CRA covered lenders made more than $27.8 billion in community development loans in 2002. Unfortunately, many communities continue to suffer from disinvestment. As with small farm and small business lending, detailing community development lending will provide the public with the information needed to ensure that particular banks are helping to meet the convenience and needs of their communities.

Conclusion

Overall, we believe that the interagency proposal would reduce the effectiveness of CRA, establish an inappropriate predatory lending compliance standard and deny many lower- income communities in urban and rural areas access to low-cost financial services, business capital and mortgage lending. The small positive benefit of the enhanced CRA Disclosure Statement and the modified affiliate rule do not begin to outweigh the damaging consequences of the rest of the proposal. We urge you to withdraw the proposal.

Thank you in advance for your consideration of this request.

Sincerely,

Paul S. Sarbanes

Christopher J. Dodd

Jack Reed

Charles Schumer

Debbie Stabenow

Jon Corzine

John F. Kerry

Tom Harkin

Frank Lautenberg

Barbara Boxer

John Edwards

Patty Murray

Hillary Rodham Clinton

Patrick Leahy

Daniel K. Akaka

Barbara A. Mikulski

Richard J. Durbin

Edward M. Kennedy

Mark Dayton

Bill Nelson

Maria Cantwell

Carl Levin

Daniel Inouye

John D. Rockefeller, IV

Jeff Bingaman

Ron Wyden

James M. Jeffords

Joseph Biden

Dianne Feinstein

Ernest F. Hollings

Joseph I. Lieberman

cc: The Honorable John D. Hawke, Comptroller of the Currency
The Honorable Donald Powell, Chairman, Federal Deposit Insurance Corporation
The Honorable James Gilleran, Director, Office of Thrift Supervision