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March 10, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW,
Washington 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: Comments Regarding Revisions to the Regulations Implementing the CRA

Dear Officials of Federal Bank and Thrift Agencies:

Community Housing Works urges you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. CRA has been instrumental in increasing access to homeownership, developing multi-family housing, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. Low income and people of color communities have utilized CRA to abolish redlining and discrimination in their communities. CRA obligates banks and thrifts to serve all communities in which they are chartered and from which they take deposits.

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The proposed changes include three major elements: 1) increase the asset threshold from \$250 million to \$500 million for banks to be eligible for a small bank exam; 2) establish a weak predatory lending compliance standard under CRA; and 3) expand data collection and reporting for small business lending and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage imposed by the first two proposals.

Additionally, **Community HousingWorks** does not agree with the federal banking agencies rejection of a proposal which would have tied a bank's CRA obligations to its market share in a given area rather than just the location of its branches. In California, Countrywide Home Loans and JP Morgan Chase are two such entities that despite the high number of loans made in the state have no CRA obligations. The agencies also failed communities by continuing to allow banks to elect to include affiliates on CRA exams at their option. Financial institutions have the ability to manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams.

Small Bank Exams

Under the current CRA regulations, large banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between \$250 and \$500 million. The proposed changes will also no longer reference affiliations with holding companies. It is expected that these proposed changes would create streamlined and cursory exams for 1,111 banks that account for more than \$387 billion in assets.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, New Market Tax Credits and equity investments in Community Development Financial Institutions (CDFIs). Such investments have promoted economic development and multi-family affordable housing development. Banks in this new category would no longer be held accountable for the provision of bank branches and checking/deposit accounts. Many banks with assets between \$250 to \$500 million are located in rural areas. Many rural banks as well as a large subset of depository institutions will no longer be required to have a continuing and affirmative obligation to serve the investment and deposit needs of all the communities in which they are chartered and from which they take deposits.

Predatory Lending

The proposed CRA changes contain an anti-predatory screen that will actually perpetuate abusive lending. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The asset-based standard creates a de-facto definition of predatory lending without taking into account other predatory tactics. These tactics include: 1. Targeting of minorities, low-income, and the elderly for sub-prime lending; 2. Originating sub-prime loans to borrowers that could qualify for prime loans; 3. Prepayment penalties; 4. Encouraging borrowers to refinance unsecured debt as a means of increasing the loan size and related point, fees, and commissions; 5. Selling of single credit insurance products as part of the home loan; 6. Mandatory arbitration provisions; 7. Excessive points and fees; 8. Yield spread premium payments or other compensations that rewards brokers for steering borrowers to higher cost products and larger loans; and 9. Purchasing and investing in predatory loans as part of a mortgage backed security.

Any standard that does not address the aforementioned nine tactics will allow CRA exams to be used to cover up predatory lending practices. Rigorous fair lending audits and severe penalties on CRA exams for abusive lending are necessary in order to ensure that low income and people of color borrowers are protected.

Enhanced Data Disclosure

The federal agencies propose for banks to publicly report the specific census tracts of small businesses and small farms receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods and communities. Also the regulators propose separately reporting purchases from loan originations on CRA exams and separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

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The positive aspects of the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data enhancements in order to make CRA exams more rigorous. The agencies are requiring that the information regarding small business and small farm lending be contained in the Disclosure Statement but would not necessarily use the data to lower ratings on CRA exams. Also data reporting on loan purchases, originations and high cost loans will not impact a CRA rating.

Conclusion

The proposed changes regarding streamlined exams and the anti-predatory lending standard threaten CRA's statutory purpose of the safe and sound provision of credit and deposit services. Full compliance with CRA regulations needs to occur where lending and profit making activities take place in substantial proportion. The proposed data enhancements would become much more meaningful if the agencies update procedures regarding assessment areas, affiliates, and the treatment of high cost loans and purchases on CRA exams. CRA gives ordinary the citizens the opportunity to have a voice regarding a bank's lending, investment and service components. CRA is too vital to be gutted by harmful regulatory changes and neglect. Thank you for your attention to this critical matter.

Sincerely,

Sue Reynolds
Executive Director
Community HousingWorks

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