

JESUIT CONFERENCE

THE SOCIETY OF JESUS IN THE UNITED STATES

321

SOCIAL AND INTERNATIONAL MINISTRIES

April 6, 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, DC 20219
FAX 202-874-4448

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
FAX 202-452-3819

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington, DC 20429
FAX 202-898-3838

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

Dear Officials of Federal Bank and Thrift Agencies:

I am writing to you on behalf of the Jesuit Conference board of the Society of Jesus in the United States regarding proposed changes to the Community Reinvestment Act (CRA) regulations. The Jesuit Conference represents the Society of Jesus in the United States, where there are approximately 3,900 U.S. Jesuit priests and brothers working in 28 Jesuit-

affiliated universities and colleges, more than 60 high schools and middle schools, nearly 100 parishes, and various other social programs throughout the country. **Propelled by a mission of social justice and a commitment to empower individuals, families and communities most at-risk in our society, I write to urge you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations.**

CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. Your proposed changes are contrary to the CRA statute because they will halt the progress made in community reinvestment.

As the financial markets undergo dramatic changes driven in part by consolidation and the development and delivery of new products, we realize that regulators also must make adjustments. We are also cognizant of the difficulties regulators face in trying to balance attempts to improve their effectiveness and to reduce unwarranted burdens on themselves. However, the proposed rule changes to CRA must be assessed by the impact they are likely to have on the people the CRA was intended to protect; namely communities comprised of low- and moderate-income households and other disadvantaged groups.

The proposed CRA changes will thwart the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. Instead, the proposed CRA changes would facilitate predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws.

We are deeply concerned with the proposed changes that would provide streamlined and cursory exams for banks with assets between \$250 million and \$500 million and that would establish a weak predatory lending compliance standard under CRA. In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas in their proposal, and thus missed a vital opportunity to continue CRA's effectiveness.

CRA 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 would reduce the rigor of CRA 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, which have been a major source of affordable rental housing needed by large numbers of immigrants and lower income segments of the minority population. Likewise, the banks would no longer be held

accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services. Thus, the effectiveness of the Administration's housing and community development programs would be diminished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit needs if they eliminate the investment and service test for a large subset of depository institutions.

In order to provide an estimate of impact of the proposed change in the CRA regulatory requirements, we separated banks into three categories based on assets size:

Group A – Banks with total assets above \$500 million (6/30/03)

Group B – Banks with total assets between \$500 million and \$250 million (6/30/03)

Group C – Banks with total assets below \$250 million (6/30/03)

We then calculated the percentage of total bank deposits in each of the three categories for all fifty states (see attached spreadsheet).

When the share of bank deposits of group B and C are combined, we found:

- For 9 states, 40% or more of bank deposits in the state are held by banks in categories B and C, i.e., banks with less than \$500 million in total assets. These banks will be subject to the "new" CRA reporting standards.
- For 20 states, 30% or more of bank deposits are held by banks in categories B and C, i.e., banks with less than \$500 million in total assets. These banks will be subject to the "new" CRA reporting standards.
- For 28 states, 20% or more of bank deposits are held by banks in categories B and C, i.e., banks with less than \$500 million in total assets. These banks will be subject to the "new" CRA reporting standards.
- For 41 states, 10% or more of bank deposits are held by banks in categories B and C, i.e., banks with less than \$500 million in total assets. These banks will be subject to the "new" CRA reporting standards.

We believe the CRA proposed changes must also be considered in light of the recently approved merger between Bank of America and FleetBoston and the proposed merger between Bank One and J.P. Morgan Chase (see attached spreadsheet).¹ Both the mergers and the proposed CRA changes could result in potential disinvestment in communities. Our analysis finds that 27 states could potentially experience disinvestment in two manners – from the CRA proposed changes and from one of the mergers; and 9 states could potentially experience disinvestment in three manners – from the proposed CRA changes and from both mergers. A total of 36 states could suffer from disinvestment as a result of both the CRA proposed changes and at least one of the mergers – a troubling statistic.

Predatory Lending Screen

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

¹ Please note that the total deposit share for each bank per state is reported and the market share of total deposits in each state of the two combined institutions.

CRA ratings. The asset-based standard falls short because it will not cover many instances of predatory lending. For example, abusive lending would not result in lower CRA ratings when it strips equity without leading to delinquency or foreclosure. In other words, borrowers can have the necessary income to afford monthly payments, but they are still losing wealth as a result of a lender's excessive fees or unnecessary products.

CRA exams will allow abusive lending if they contain the proposed anti-predatory standard that does not address the problems of the packing of fees into mortgage loans, high prepayment penalties, loan flipping, mandatory arbitration, and other numerous abuses. Rigorous fair lending audits and severe penalties on CRA exams for abusive lending are necessary in order to ensure that the new minority homeowners served by the Administration are protected, but the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending, the proposed standard will forestall CRA's statutory requirement that banks serve low- and moderate-income communities consistent with safety and soundness.

Updating Exam Procedures

The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. Further, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches. Many banks make considerable portions of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams.

CRA examiners should consider the widest possible geographical area and most inclusive coverage possible. Technological changes and consolidation within the financial industry have allowed financial institutions to compete effectively in new markets across the entire country, and since many predatory loans are made by some non-depository affiliates of large financial institutions, it is reasonable to expect CRA examiners to consider the lending activities of **all** of an institution's affiliates in **all** of the geographical areas in which these affiliates operate.

As the agencies write: "...predatory and abusive lending practices are ... inconsistent with the purposes of the CRA." We agree wholeheartedly with this perspective. To eliminate predatory lending practices from American credit markets, greater transparency of all participants in all credit markets needs is required. This goal can be achieved by requiring all the lenders (the principle institution as well as all of its affiliates), who fall under the CRA regulations, to be included in the CRA exam. To allow the institution being examined to specify their assessment area and to identify the affiliates they want to include in the examination seems to us to create an opportunity for the institution to bias the results. This should not be permitted.

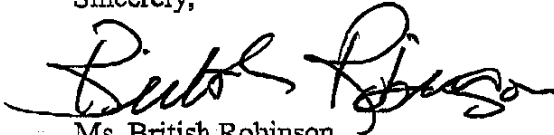
US Jesuit Conference comment letter regarding proposed CRA changes

5

Summary

The proposed changes to CRA will directly undercut the Administration's emphasis on minority homeownership and immigrant access to jobs and banking services. The proposals 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. It is vital that the federal banking agencies ensure that America's communities, particularly those most at-risk, have access to fair and reasonable credit. **I strongly urge you to withdraw the proposed changes to the CRA regulations.** Thank you for your attention to this critical matter.

Sincerely,



Ms. Beth Robinson
National Director of Social and International Ministries
U.S. Jesuit Conference

cc:

President George W. Bush
Treasury Secretary John W. Snow
National Community Reinvestment Coalition