

THE FINANCIAL SERVICES ROUNDTABLE



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EXECUTIVE DIRECTOR
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October 17, 2001

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: Docket No. 2001-49

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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. and Constitution Ave, N.W.
Washington, D.C. 20551
Docket No. R-1112

Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller
of the Currency
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket No. 01-16

Re: Advance Notice of Proposed Rulemaking on
Community Reinvestment Act Regulations

Dear Sirs and Madams:

The Financial Services Roundtable ("the Roundtable") is a national association that represents 100 of the largest integrated financial services companies providing banking, insurance, investment products, and other financial services to American consumers. The Roundtable appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, "the agencies") on the advance notice of proposed rulemaking ("ANPR") on the Community Reinvestment Act ("CRA") regulations.

The Roundtable firmly supports the goals of the CRA regulations: (1) emphasizing in examinations an institution's actual performance in, rather than its process for, addressing CRA responsibilities; (2) promoting consistency in evaluations; and (3) eliminating unnecessary burden. In addition, the Roundtable appreciates the efforts of the agencies to solicit input on how to improve the effectiveness of the regulations.

Among the issues raised by the agencies in the ANPR is the threshold question of whether any change to the CRA regulations would be beneficial or is warranted. It should be noted at the outset that the member companies of the Roundtable are split on this issue. Generally, most Roundtable members see no reason for any wholesale or major changes to the regulations at this time. Most companies have learned to operate successfully under the current regulations. The Roundtable thus believes that on balance, the regulations work well and its members would rather not see any major changes made.

Some members, however, advocate some minor "tweaking" and fine tuning to improve the effectiveness of the regulations. Finally, several Roundtable members favor more substantial revisions to accommodate and address advances in technology, modernization within the financial industry, and the creation of new business models and strategies that have occurred over the past several years.

The Roundtable believes that both the benefits and costs of any change to the CRA regulations should be carefully considered before final adoption. In addition, any change should increase the flexibility of financial institutions to comply with the requirements of the regulations without significantly increasing burden.

This letter outlines some revisions that several Roundtable members have suggested that may improve the effectiveness of the CRA regulations. This letter does not, however, represent the views of all of the Roundtable member companies.

BROADER DEFINITIONS OF LIMITED PURPOSE AND WHOLESALE INSTITUTIONS

The agencies raise the issue of whether the definition of limited purpose or wholesale institution should be expanded to capture retail institutions that offer more than a narrow product line on a regional or national basis. The Roundtable believes that the CRA regulations could be improved by broadening the definitions of limited purpose and wholesale institutions, thereby expanding the availability to institutions of the community development test. *This would give institutions greater flexibility under the regulations to demonstrate how they are helping to meet the credit needs of their entire communities.*

In general, the definition should provide the agencies with adequate flexibility to acknowledge the evolution of the marketplace. In particular, the definition should be expanded to cover financial institutions that exclusively employ alternative, non-branch delivery systems as their primary channel of distribution for products and services. For example, in recent years, several "non-traditional" financial institutions have been launched that rely exclusively upon telephones, the Internet, or direct mail to serve and correspond with their respective customers. These branchless institutions should be accorded the same flexibility in their CRA compliance as other institutions that have traditionally been designated as a limited purpose or wholesale institution.

LENDING, INVESTMENT, AND SERVICE TESTS

The ANPR requests comment on whether the CRA regulations strike the appropriate balance among lending, investments, and services. This is an area where the Roundtable member companies are especially split in their views. Most members believe that the regulations in their current form, as they relate to large retail institutions, work well. In particular, these companies believe that investments by financial institutions are invaluable in helping to meet the credit needs of the institutions' communities, particularly in low- and moderate- income areas.

Many member companies, however, have concerns about the long-term sustainability of their investments under the current regulations, where a separate investment test is imposed. These companies have expressed concerns that the definition of qualified investments is too narrow. Several of these companies would favor elimination of the investment test, or at least subsuming the investment test into the lending test so that investments are substitutable for loans.

At the same time, other companies believe that the lending test should no longer be given greater weight than investments and services. These companies contend that shifting the weighting of the tests so that all three count equally would enhance the regulation. While acknowledging that lending is a very important component of the CRA, these companies believe that investments and services are equally important. Moreover, many would prefer to get more credit for their investments.

To reconcile these competing views, the Roundtable recommends a bifurcated approach, whereby institutions could choose between the existing system and a modified, expanded community development test that considers lending, investment, and services as interrelated, interchangeable parts of the same overall test. This would provide additional flexibility to institutions that feel constrained by the current system, while allowing institutions that have adapted successfully to the current system to continue their current method of compliance. Such a bifurcated system would give institutions the broadest array of options to carry out their CRA mission in a manner that best fits their business strategy.

LENDING TEST

The ANPR solicits comments on whether the regulations should continue to treat originations equal to purchases or whether originations should count for more than purchases. The Roundtable recommends not making any change at this time. We strongly believe that purchases should continue to receive equal credit with originations in evaluating an institution's overall performance under the lending test. Attempts to value originations and purchased loans differently will introduce an unnecessary level of complexity for little benefit under the statute. Moreover, the Community Reinvestment

Act itself makes no such distinction. As both originations and purchases increase the flow of credit, and as purchases of loans from originating banks free up their funds to make additional loans, the Roundtable sees little value in discouraging loan purchases.

The Roundtable would like to provide an additional comment related to the lending test that was not suggested in the ANPR. We believe that letters of credit (L/Cs) that meet the regulatory definitions of lending for community development or small business should be included in the assessment of a bank's lending activities. Letters of credit are generally required enhancements for bonds that finance affordable housing and economic development projects and thus generally increase the level of funds available for this purpose. Issuers of L/Cs conduct the same analysis that lenders conduct and have the same credit exposure as lenders. L/Cs are treated as loans for other regulatory purposes, such as capital requirements and loans-to-one-borrower limitations. Because L/Cs represent an important community credit need, they should be formally defined as a form of credit in the CRA regulations. L/Cs increase the amount of low cost credit available in communities. Through bank guarantees, many institutions are able to make community development financing less expensive to the communities that need it most.

SERVICE TEST – ALTERNATE DELIVERY SYSTEMS

The Roundtable believes that the evaluation of services should consider not only the delivery method and type of service, but also the effectiveness of the delivery method, *i.e.*, the extent to which low- and moderate- income persons actually use the services. For example, many of our member companies contend that ATMs are frequently used and are an effective way to provide services in low- and moderate-income communities. Therefore, institutions should receive consideration under the service test for their ATMs in these locations.

In addition, the Roundtable believes that the service test should provide more consideration for flexible and innovative deposit accounts. These products enable low- and moderate- income people and communities who may currently be underserved by financial institutions to establish banking relationships, helping them to increase savings and qualify for future credit.

PREDATORY LENDING ISSUES

The ANPR requests comments on whether CRA examinations should include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help to meet community credit needs. While the Roundtable agrees that so-called predatory lending is in sharp contrast to the spirit of the CRA, we also believe that it is very difficult, and counterproductive, to define subjective terms that could vary with the situation, such as "harmful" and "abusive." The existing regulations, which provide that evidence of discriminatory or other illegal credit practices will adversely affect the evaluation of an institution's performance, already ensure that illegal credit practices will

be considered in determining an institution's CRA rating. Moreover, the Roundtable believes that these issues are already taken into account in fair lending examinations and other contexts. Thus, an additional component in CRA examinations for harmful or abusive terms is unnecessary and would be duplicative.

Institutions that engage in legitimate subprime lending activities serve a very important function in the community by providing credit to those who do not have access to traditional financing because they have poor credit history, no credit history, otherwise do not meet prime lending criteria, or are reluctant to approach traditional lenders. These institutions should not be confused with the limited subset, often not subject to the CRA regulations, that actually engage in harmful or abusive lending activities.

ASSESSMENT AREAS

The agencies solicit comments on whether the provisions on assessment areas, which are tied to geographies surrounding physical deposit-gathering facilities, provide a reasonable and sufficient standard for CRA evaluations. The majority of Roundtable members believe that the assessment area delineation in the current regulations has proven adequate and thus does not need to be changed.

However, several of our members point out that the method of taking deposits and making loans has changed dramatically since the passage of the CRA in 1977 and the system of an institution having a discrete geographic customer base is no longer the dominant model. For many institutions, the location of deposit taking is not necessarily related to what is viewed as their service area by the regulations. Moreover, because many institutions do not employ retail branches for the delivery of their products, identifying an appropriate assessment area can be quite difficult and confusing for both the institution and its regulators. These member institutions thus advocate more flexibility with regard to the definition of their assessment area.

INNOVATION

The agencies asked whether the regulations provide too little consideration for an institution's focus on smaller projects, whether or not "innovative," that are particularly difficult to carry out, but are especially meaningful and responsive to the institution's community. Several Roundtable members have expressed frustration that examiners seem to be requiring new evidence of more "innovation and complexity" at each examination. The Roundtable recommends that the regulations should provide for more flexibility for CRA examinations, and less specific emphasis on innovation. While innovation and complexity should continue to be treated as *factors* that add to the value of a CRA loan, service, or investment, a financial institution should not be downgraded for failing to demonstrate that some percentage of its lending and investments is innovative or complex. Financial institutions that are doing significant conventional

lending into their communities should be rated Satisfactory, not criticized for not being innovative and complex.

DATA COLLECTION

The agencies seek comment on whether the data collection and reporting requirements are effective and efficient approaches for assessing an institution's CRA performance while minimizing burden. The Roundtable believes that these requirements are unduly burdensome and the data collected is of minimal use, since it tells little about the actual need for credit by geographical area of the community. The Roundtable recommends elimination of the current data collection requirements and strongly opposes adding any more data collection, as such additional collection and reporting would be burdensome and of little analytical value.

While the Roundtable believes that the information and documents contained in the public files should be accessible to the public, we also feel that the technicalities of maintaining the public files is burdensome, given that it is rarely requested. We propose making the public file information available at one central location. At the same time, the requirements should be retained for depository institutions to clearly publish the location of the public file as part of the branch notices and to comply with all requests for public file information that are made through the branches within five business days. Public file information could be made available through a variety of media, such as through the Internet, sent upon telephone request or in person, effectively making it more readily available than under the current requirements.

ACTIVITIES OF AFFILIATES THAT ARE NOT SUBSIDIARIES OF THE BANK

The agencies solicit comments on whether the provisions on affiliate activities that permit, but do not require, consideration of an institution's affiliates' activities at the option of the institution are effective in evaluating the CRA performance of the institution. The Roundtable believes that the *status quo* should be retained, allowing depository institutions to request consideration of affiliate activities at their option. This provides the greatest flexibility for institutions and is more consistent with the Act than either mandatory inclusion of affiliate lending or total exclusion of affiliate lending.

Forcing institutions to count affiliates is inappropriate for those who engage in completely separate businesses. Institutions within bank holding companies structure their operations for a variety of business, tax, legal, and operational reasons. They should not be obligated to bear the burden and expense of restructuring their operations because of pressures emanating from the CRA.

CONCLUSION

In general, The Financial Services Roundtable does not recommend or require any major changes to the CRA regulations at this time. We look forward to continuing to work with

the agencies to ensure that the goals of the CRA regulations are realized and that the regulations remain viable and effective over time.

Thank you for considering the Roundtable's views on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact Steve Bartlett, Maura Solomon, or me at (202) 289-4322.

Sincerely,

Richard M. Whiting

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