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October 9, 2001

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551
RE: Docket No. R-1112

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th St. NW
Washington DC 20429

Docket No. 01-16
Communications Division
Public Information Room
Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW
Washington DC 20219

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G St. NW
Washington DC 20552
Attention: Docket No. 2001-49

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

Document\#79937\ECDEV\Y1

Dear Officials of Federal Banking Agencies:

On July 31, 2001, the Federal Reserve Bank of Dallas forwarded to financial institutions and others within the Eleventh Federal Reserve District a copy of the Proposed Rules which appeared at page 37602 of the Federal Register, Vol. 66, No. 139, dated July 19, 2001. The Federal Register provided an advance notice of proposed rulemaking ("ANPR") with respect to Regulations under the Community Reinvestment Act ("CRA" - 12 U.S.C. §§ 2901, *et seq.*). This letter has been prepared as a response to the solicitation in the ANPR for comments to the agencies involved in the administration of the CRA.

The City of El Paso ("the City") is a home-rule municipal corporation existing pursuant to Texas Local Government Code § 5.004. These comments are submitted on behalf of the City and its citizens, who may be affected by the Regulations adopted under the CRA.

In general, the City supports many of the comments and recommendations made by the National Community Reinvestment Coalition ("NCRC") in its response to the referenced ANPR. The City acknowledges that positive changes made to the CRA Regulations in 1995 have been significant in many communities. To the extent that CRA has improved the efficiency of the marketplace, lending has been increased while discrimination and barriers to information have been reduced. In many instances, we understand that partnerships between lending institutions and community groups have discovered new methods of loan underwriting and marketing that are more effective in reaching underserved communities.

Several of the questions posed by the ANPR are addressed in sufficient detail by NCRC and do not require comment in this letter. The City would like to call the attention of the responsible agencies to that portion of the ANPR which deals specifically with areas which are of greatest interest and concern to the citizens of El Paso.

ANPR Item 1.A. Large Retail Institutions: Lending Test

Does the lending test effectively assess an institution's record of helping meet the credit needs of its entire community?

The ANPR includes the following factors for evaluation by the regulatory agencies of an institution's lending performance:

1. The number and amount of loans originated or purchased by the lending institution *in its assessment area;*
2. The geographic distribution of its lending;
3. Characteristics, such as income level, of its borrowers;
4. Its community development lending; and
5. Its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner.

The key to any such evaluation is the "assessment area" to which the institution is assigned. For large regional or national institutions, the assessment area may be a state or region for which reporting is done on a state-wide or region-wide basis under a single charter number. A city such as El Paso, which has three large institutions that account for a majority of the deposits within the community, cannot determine the local lending performance of such institutions, based upon the existing CRA Regulations' reporting requirements. The only information currently available through such reporting does not show sufficient level of detail of the listed factors for a large institution on a local level. Such information is available only for the smaller institutions within the community, whose lending business in the community makes up a majority of such institution's overall business. This gap makes it difficult for the City to recognize whether a lender's performance meets "the credit needs of its entire community."

"Does the lending test effectively assess an institution's record of helping meet the credit needs of its entire community?" In the case of El Paso, Texas, city of 679,622 people, the answer to this question is a resounding, "No." From the data that are available, the City has been able to determine the relatively low level of lending activity which exists within the community, in comparison to other cities in Texas (this information is provided as an addendum to this comment letter). The City of El Paso would urge the agencies to add additional assessments to the lending test to make the test a truer reflection of a city's credit needs and whether these needs are being met.

For each establishment operating as a depository institution within a community, the City would ask that a loan-to-deposit ratio be included in the report for that local community. Approximately 73.7% of El Paso's deposit market share is owned by three large multinational chains. Their CRA reports only present loan-to-deposit ratios for the entire State of Texas. It is very difficult to assess an institution's lending compared to its capacity at the <u>local</u> level. The City would ask that this ratio not only be included in the report, but that it be a factor in determining the rating of the bank in the lending test.

The City would further ask that banks be assigned a rating within each assessment area. A bank might have outstanding performance at a state level or in other assessment areas. If the institution, however, is underperforming in a particular assessment area, this should be reflected in the exam. This is consistent with the concept put forward in the CRA that the bank's participation in the "local community" be assessed.

Additionally, the City would ask the agencies to assess a local community's overall lending activity in relationship to other similar assessment areas, areas with the same economic and geographic dynamics in place. If a community's entire record of lending is poor in relation to other comparable assessment areas, this should be reflected in the CRA reports. Institutions which are leading the pack in lending in an underperforming assessment area—while performing well in relation to the aggregate—may not be meeting their "obligations to help meet the credit needs of the local communities in which they are chartered." Banks with a significant share of the market should, in particular, be held accountable for an underperforming aggregate. We would ask that this concept also be used with respect to the service and investment tests.

In any evaluation of the rules as they currently exist, we would ask the agencies to pay special attention to the history and impact of CRA in El Paso, Texas. The CRA has had a positive impact in many communities throughout the country; however, in communities such as ours—large communities with relatively few banks—the assessments have not accurately reflected the responsiveness of the banks to the local market. This is an area that the City believes must be addressed if *all* communities are to benefit from this legislation.

* * * * *

The City concurs with NCRC that, to preserve the progress in community reinvestment, the federal banking agencies must update CRA to take into account the revolutionary changes in the financial industry. The Gramm-Leach-Bliley Act of 1999 allowed mergers among banks, insurance companies, and securities firms. Banks and thrifts with insurance company affiliates are now aggressively training insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage company affiliates of banks continue to make a significant portion of the total loans, often issuing more than half of a bank's loans. The CRA Regulations now allow banks to choose whether the lending, investing, or service activities of their affiliates will be considered on CRA exams. The City joins NCRC in strongly urging the regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams.

As NCRC will propose, the CRA procedures for delineating assessment areas also need to be changed if CRA is to capture adequately the activities of banks in the rapidly evolving financial marketplace. Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Banks are increasingly using brokers and other non-branch platforms to make loans. As a result, CRA exams of large, non-traditional banks scrutinize a tiny fraction of bank lending. This directly contradicts the CRA statute's purpose of ensuring that credit needs in all the communities in which a bank is chartered are met. NCRC believes, and the City concurs, that the CRA Regulations must specify that a bank's CRA exam will include communities in which a great majority of a bank's loans are made.

If CRA exams hope to keep pace with the changes in lending activity, the City agrees with NCRC's position that CRA exams must rigorously and carefully evaluate subprime lending. Subprime lending must not count as much as prime lending on CRA exams, and CRA exams must severely penalize any subprime lending that is predatory.

NCRC believes a straightforward definition of assessment areas for the new banking era is geographical areas where a depository institution and/or its affiliates have branches, offices, and/or in areas where they have more than one half of a percent of the market in loans. This would ensure that lending institutions are examined in all areas in which they are chartered and in which they engage in a significant amount of their business. NCRC suggests that, at the very least, the federal banking agencies can stipulate in the CRA regulation that assessment areas will be those areas containing a great majority of an institution's loans. The City believes that even this stipulation may not be strong enough. As stated above, it would be in the best interest of communities such as El Paso for assessment areas for large (regional and national) retail institutions to include reporting of activity for Metropolitan Statistical Areas in which the institution constitutes a significant share of the community's deposit and lending business, regardless whether those loans made up a "great majority" of the institution's overall lending. What is not necessarily significant to the institution may, in contrast, be of vital importance to the community.

Your thoughtful consideration of the issues raised in this comment letter will be appreciated. If there are any questions, please feel free to contact me.

Sincerely,

Raymond C. Caballero
Mayor

Enclosures

cc (w/o enclosures):
Roberto E. Franco, Director, Economic Development Department
Charlie McNabb, Acting Chief Administrative Officer
Rita Rodriguez, First Assistant City Attorney