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October 15, 2001

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

Docket No. 01-16, Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
Independence Square
250 E Street, SW
Washington DC 20219-0001

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

Docket No. 1112
Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Ave, NW
Washington, DC 20551

Dear Regulators:

The National Training and Information Center (NTIC) is writing to comment on the Advanced Notice of Proposed Rulemaking on the Community Reinvestment Act that was published in the Federal Registry in July 2001. Since working to pass the Community Reinvestment Act, NTIC have used CRA as a very important tool to improve low and moderate income neighborhoods. NTIC has worked with banks to get agreements to serve the particular needs of their neighborhoods. We have been instrumental in working with banks throughout the country to recognize that investment in low and moderate neighborhoods is a good investment. In fact, Kenneth H. Thomas, Ph.D., a noted CRA scholar wrote, "The National Training and Information Center has been involved with the largest number of CRA challenges and agreements" (Community Reinvestment Performance, p. 14). In Chicago, NTIC still sits on several bank review boards as part of CRA agreements that were negotiated in 1984.

The original goal of CRA, to ensure that credit needs are being met in all communities, is as important now as it was in 1970s. By passing HMDA, we were able to prove that a pattern of redlining existed by revealing where lenders were making loans, which was not in low and moderate income areas. This made it possible to pass CRA, which we estimate is responsible for hundreds of billions of dollars being lent in low and moderate income neighborhoods. Significantly, banks have also built branches in these neighborhoods that physically represent a bank's reinvestment commitment.

In order to continue access to quality credit in low and moderate income neighborhoods, CRA needs to be modernized to keep pace with the changing face of our financial institutions. Instead of seeing no loans in low and moderate income neighborhoods, we are now seeing an abundance of bad loans in these same neighborhoods. Predatory lenders are charging outrageous interest rates and fees for financial services in these neighborhoods because banks are not doing their jobs. In Chicago's largest neighborhood, Austin, subprime lenders made 49% of the loans in 2000. In fact, fifteen of the top 25 lenders in Austin were subprime lenders. This serves to create two tiers of lending in the United States, with the people who can least afford it, being the ones paying the most for financial services. If CRA is not modernized, it will lose its ability to hold our quickly changing financial institutions accountable to the communities in which they operate.

A key way to modernize CRA is to expand it to cover all residential mortgage lenders and insurance companies. By holding other insurance companies and other mortgage lenders accountable to CRA, low and moderate income individuals would have more access to mainstream economic services.

In order to keep our neighborhoods alive, we need to improve CRA to keep pace with the modernization of financial institutions. There are three main categories where improvements need to be made: reporting requirements; exam structure; and rating structure. Our comments in response to the ANPR are explained under these categories.

Reporting Requirements

The expansion of HMDA disclosure and small business data disclosure are two ways to improve the reporting requirements for a CRA exam.

Any abusive terms, fees and credit scores should be accounted for in HMDA disclosure.

Under current HMDA disclosure laws, there is no way to fully substantiate the enormous increase in the so-called subprime lending market. HMDA data needs to be expanded in order to give regulators and community groups accurate information about the quality of the loans that banks are making in the neighborhoods. We are pleased that there is a proposed addition of the annual percentage rate to the HMDA data. This data, unfortunately, is not enough. Fees, credit scores and predatory practices need to be included in the HMDA disclosure. Fees and interest rates should be disclosed separately. We have heard stories of fees amounting to as much as 25% of the loan. Fannie Mae has estimated that half of all borrowers with subprime loans could qualify for prime rate loans. These borrowers have been "steered" into a subprime loan, which is universally considered a predatory practice. Steering could be detected by requiring lenders to disclosure the credit score for each application.

Small business data disclosure should include the status of each loan application, whether it is denied, withdrawn, incomplete, approved but not accepted, and originated. Also included in small business disclosure should be the race, gender of applicants, and the actual census tract in which the business is located.
Even though it is increasingly common for borrowers to get home mortgage loans through non-depository institutions, depository institutions are still primarily the lenders for small businesses. Small business lending should be held to as equal scrutiny as home mortgage lending. Small business data disclosure should more closely mirror HMDA data in what is reported (status of application, the race, gender of applicants, and census tract) and how it is reported (codes can be easily given as in HMDA for denial reasons for the loan). This disclosure should be made available in the same format as HMDA data so it easily accessible for the public. Our experience in Chicago is that, when asked only a few banks will provide us with small business data by census tract. The only way to make all banks provide this information is to require it through expanding small business data disclosure.

<u>Exam Structure</u>
Improvements in the exam structure include: affiliates being covered under CRA; small retail institutions should be examined just as large retail institutions; establishing a better definition for investment test credit; enhanced multi-family lending attention to avoid saddling a building with excessive debt; enhancements in the service test that give credit for serving the needs of the low and moderate income neighborhood; and better defined assessment area.

Affiliates covered under CRA
Under the current CRA, institutions have the option to count affiliate activity in or out of their CRA exam. This leads to a bank's potential to manipulate its CRA rating. Currently, a bank can own a predatory lender and use those loans to affect its CRA rating. First, in order to differentiate between prime, subprime and potentially predatory loans we need the aforementioned increased HMDA disclosure. Secondly, all non-bank affiliates of bank holding companies that engage in lending should be covered under the CRA. As financial modernization made it easier for banks to acquire other financial services, CRA must be expanded to cover these institutions as well. After all, HMDA was amended in 1988 and 1991 to expand reporting to cover most mortgage banking subsidiaries of bank and thrift holding companies and independent mortgage companies not affiliated with depository institutions. These amendments resulted from the need for HMDA to keep pace with the chances in financial institutions.

Small institutions should be required to go through the same exam as large institutions

Much discussion has centered on what asset size should qualify a bank for the streamlined bank evaluation. NTIC believes that there should not be any further tiers created to ease a bank's transition from a small bank test to a large bank test. In fact, we feel that the small institution test should be eliminated. All banks should be subject to the lending, investment and service tests by which the large retail institutions are evaluated. Small bank tests are too general and the banks themselves have commented on the ease of the exams. Therefore, they should be no asset determination for qualifying for a large or small retail test. All banks should be equally evaluated in serving the needs of low and moderate income neighborhoods.

Investment test credit improvement

Contracting for the service of neighborhood businesses should receive CRA credit under the investment test. For example, the right to contract with a janitorial company, a catering company, a local printer might do more to stabilize business and jobs in the neighborhood than a loan to a business that then has no regular customers. As well, defining contracts for services to small, community-based start-up businesses as an investment is required to build neighborhoods.

Banks should not get credit for grants to charities that do not serve the original spirit of CRA, that financial institutions have an obligation to meet the credit needs of low and moderate individuals in a community.

Multi-family lending

Banks receiving CRA credit for a multi-family loan on a property that is not maintained properly is not acceptable. For instance, in a housing market where property values are on the rise, landlords may get a cash-out loan by borrowing against the equity in the multi-family property. Banks saddle a building with excess debt by loaning out the maximum money. However in many cases irresponsible landlords do not use the money from the cash-out refinance or equity loan to make repairs on the property. As a result, the housing stock begins to deteriorate. For this reason, a bank's record of maintaining the non-owner occupied properties that it finances is a community reinvestment issue and should be considered under the lending test.

Service tests

Physical locations in low and moderate income neighborhoods should be weighted heavily under the service tests. With quantitative data to support the use of its services, physical sites should receive more credit, as they often serve as the anchors to a neighborhood's residential and commercial development. Perhaps banks should report by census tract the branches and services offered at that branch.

Every evaluation should note whether a bank offers free checking accounts with no minimum balance requirements. Institutions that hold significant deposits of LMI neighborhood residents should receive additional credit.

Expand the assessment area
The current assessment area definition falls short of capturing the expansion of lending activities beyond traditional brick and mortar locations as institutions learn to reach beyond home markets making physical location less important. Expanding the assessment area to include areas where the institution has one-half of one percent market share will make lending institutions responsible for their business practices in the majority of areas they serve. The assessment area should include areas where the institution has offices, branches, and deposit taking ATM's.

Rating Structure
Currently, 97 percent of banks receive a satisfactory or outstanding rating on their CRA exams. People in neighborhoods certainly don't find that 97 percent of the banks in the neighborhood are passing. In order to improve the rating structure a rating of a bank should be automatically downgraded if the bank is making predatory loans; stronger rating guidelines; localized ratings should be developed; public files should be available at all bank branches and on the CRA performance evaluation should be available on the bank's website.

Banks' rating downgraded for predatory loans
CRA exams should evaluate a bank's subprime loans for any predatory practices (see the enclosed list). Banks should receive a rating of Substantial Non-Compliance if they are making predatory loans.

Rating guidelines
The current rating scale is geared for a bank to pass, regardless of their performance. It seems implausible that a bank could receive 47 percent of the total points in a large retail institution exam, and still get a satisfactory rating. In order to truly evaluate a bank's performance under each test the public exam should include a bank's individual score for the lending, service and investment tests.

In addition, the rating system should be restructured so that no bank can receive an overall Satisfactory rating if it receives a Substantial Non-compliance rating on any component of the test or if it receives a Needs to Improve rating on more than one test. All conclusions on ratings for each test should be substantiated with relevant facts, numbers and examples.

HMDA data is critical in evaluating a bank's performance. If there are HMDA quality or validity reporting violations that the institution does not correct, it should automatically prohibit a bank from receiving an outstanding rating on its CRA exam.

Localized ratings
CRA ratings can also be made more realistic by having localized ratings. We have seen a number of examples of banks that do a good job of serving communities in one or two cities, but pathetic job everywhere else, and still receive satisfactory ratings. Changing this would influence all banks to be more concerned about effectively serving all the communities in which they claim to have a presence, or include in their service area.

Especially with the drastic reductions taking place in the number of true community banks, due to financial modernization which allows the industry to conglomerate to a greater extent than ever before, it is important that some way is found to keep these banking giants invested in their community performance and responsibility. A localized rating system could require the top 10 banks in the state's market to have separate MSA based and rural area ratings and performance evaluations. We want to be part of the process that can develop a more localized rating system.

Public file

Every bank should still be required to maintain a public file at its branch. Under no circumstance should this be weakened due to the claims that the public does not utilize the files. In fact, the data disclosure should that banks are responsible for should actually be expanded. As mentioned before, the specific score for each test should be made available to the public. For example, the public exam should include if a bank gets 10 points on the lending test. Also, banks and regulators should be required to make exams available from 1990. Every CRA exam should also summarize basic past and present HMDA data denial rates with peer comparisons. An institution should also include the public exam on its website, just as an institution includes the annual report.

Thank you for your attention to these matters. Neighborhoods are this country's greatest asset. It is vital to modernize CRA to meet their credit needs and fight the abuses of predatory lending. Please let me know if you have any questions about our response or if we can provide any additional information.

Sincerely,

Joseph W. Mariano

Joe Mariano
Executive Director