MARYLAND CENTER for Community Development

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October 15, 2001

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington DC 20552

Fax: 1-202-906-6518

Re: Docket No. 2001-49

Dear Chief Counsel:

Like most organizations that are working at the community level, the Maryland Center for Community Development believes that the Community Reinvestment Act (CRA) has been instrumental in increasing lending and investing to our community and many others around the country. We believe that the regulatory changes to CRA during 1995 strengthened the law by emphasizing a bank's performance in providing services and in making loans and investments. But now we believe that the federal banking agencies must update the CRA regulations in order to further reinvestment in low- and moderate-income communities as well as underserved minority communities.

The results of the positive changes to the CRA regulation in 1995 have been significant. **The Department of Treasury's study on CRA found that lending to low- and moderate-income communities is higher in communities in which banks have their CRA assessment areas than in communities in which banks are not examined under CRA.** In our community, CRA has made it possible for hundreds of minority households to become homeowners, who were well educated and supported through a network of nonprofit housing counseling agencies who not only provide education but also counsel the individual on improving credit histories, evaluating objectively sales pitches from real estate agents and financial lenders, and knowing the responsibilities of homeownership before signing a contract. Working with local lenders we have been able to develop a significant spectrum of affordable mortgage products. And, we have been able to build partnership relationships between financial institutions and local nonprofits working on community development, so that successful, viable community development lending is occurring to rebuild and strengthen neighborhoods.

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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.

The CRA regulation now allows banks to choose whether the lending, investing, or service activities of their affiliates will be considered on CRA exams. **MCCD strongly urges the regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams.** This change would most accurately assess the CRA performance of banks that are spreading their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers. Ending the optional treatment of affiliates will make exams more consistent in their scope and stop the manipulation of CRA exams. Currently, banks can elect not to include affiliates on CRA exams if they make predatory loans or if they make loans primarily to affluent customers. The Community Reinvestment Act was geared toward ensuring loan and service activity where deposit activity was occurring, and the legal structure of the affiliate should be secondary – the institution is undertaking bank-like activities and those activities are activities covered by CRA, and therefore the institution undertaking the activity should be covered.

The CRA procedures for delineating assessment areas also need to be changed if CRA is to adequately capture 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. **We believe that the CRA regulations must specify that a bank's CRA exam will include communities in which a significant portion of a bank's loans are made.** It should also include geographic areas in which they have loan-generating vehicles, whether it be automated loan machines or some other vehicle.

If CRA exams hope to keep pace with the changes in lending activity, MCCD strongly believes that CRA exams must rigorously and carefully evaluate subprime lending. The CRA statute clearly states that lenders have an affirmative obligation to serve communities in a safe and sound manner. CRA exams must be conducted concurrently with fair lending and safety and soundness exams to ensure that lending is conducted in a non-discriminatory and non-abusive manner that is safe for the institution as well as the borrower. **MCCD applauds a recent change to the "Interagency Question and Answer" document stating that lenders will be penalized for making loans that violate federal anti-predatory statutes. This Question and Answer should become part of the CRA regulation.**

Additionally, MCCD believes that lenders should be encouraged to make as many prime loans as possible since prime loans are more affordable for minority and low- and moderate-income borrowers. Significant research concludes that too many creditworthy borrowers are receiving over-priced and discriminatory subprime loans. CRA exams must provide an incentive to increase

prime lending. It does not seem unreasonable to us that lenders that make both prime and subprime loans will not pass their CRA exams unless they pass the prime part of their exams. There should be an obligation on the lenders part to offer the person the product most close-to-prime, with the lowest aggregate cost. We understand that a single criteria such as the interest rate of the loan is not a sole indicator of whether it was the best value for the borrower; but, we also understand that financial institutions are making sub-prime loans to clients who could have qualified for a prime loan and this should be vehemently discouraged by the bank regulators.

The CRA regulations must be changed so that minorities are explicitly considered on the lending test just like low- and moderate-income borrowers. Considerable research has revealed the domination of subprime lenders in refinance and home equity lending in minority communities. This lopsided market confronts minorities with few alternatives to high cost refinance lending. If minorities were an explicit part of the lending test, CRA exams would stimulate more prime lending in communities of color.

Segments of the banking industry will seek to weaken the CRA regulations and examinations. They will ask for the elimination of the investment test on large bank exams. MCCD opposes the elimination of the investment test since low- and moderate-income communities across Maryland continue to experience a shortage of equity investments for small business and other pressing economic development needs. We firmly believe that service and investment is just as important as lending activity for the communities that our members work in.

The CRA regulations and examinations do not need to be weakened, in fact we would argue that more must be done to encourage financial institutions to seek an outstanding rating. It concerns us when such a significant majority of institutions receive a satisfactory, and when so many are content with that. More must be done to more vigorously stratify quality and results – in any performance review if more than 95% are achieving a satisfactory rating then it generally means that the rating benchmark was too low. And, when few are striving for outstanding, it means that there are not sufficient incentives and reasons provided to strive.

We urge the regulatory agencies to adopt these additional policies:

- Purchases of loans should not count as much as loan originations on CRA exams since making loans is the more difficult task.. The lending test must receive primary emphasis because redlining and predatory lending remain serious problems in working class and minority neighborhoods. And, second and third purchasers should not be given credit – we have had bankers confess to us, that banks will buy and sell each other loans so all get CRA credit on that one deal. While we understand the value of a secondary market and the ability to sell a loan in order to have cash to make new loans, and do not want to negate that value, what I am seeing when four bankers all admit to me that they owned a particular loan and it was traded among them, that is not furthering the liquidity for further lending but is something much less useful.

- The emphasis on quantitative criteria must remain in CRA exams. If the bank's "qualitative" or "innovative" programs produce a significant number of loans, investments,

and services, the bank will perform well on the quantitative criteria. Banks must not receive an inordinate amount of credit for an "innovative" program or practice that does not produce much in terms of volume. Given the time between exams, the bank has the ability to put an innovative program in place and see the quantitative results. And, if they created the innovative program just prior to the exam, either they should receive no credit for it, or their exam result should at best be provisional – let them remain on probation for a year and the examiner can return to see if the innovation has produced meaningful results. As the local lenders tell me, CRA is about results, not just good intentions. We believe that results can be found, with safety and soundness, with responsible activities that are also innovative.

- The Federal Reserve Board must enact its proposed HMDA reform to include information on interest rates and fees so that subprime lending can be assessed on CRA exams. The CRA small business data must include information on the race, gender, and specific revenue size of the borrower and the specific census tract location of the business.

- The service test must be enhanced by data disclosure regarding the number of checking and savings accounts by income and minority level of bank customer and census tract. Payday lending is abusive and must not count on CRA exams. The cost of services must be a factor on CRA exams since high fee services do not meet deposit needs and strip consumers of their wealth and savings. The service test must award the most points to banks that provide a high number of affordable services to residents of low- and moderate-income communities. **And the test must measure how many actual accounts they are holding of this type, not simply that they claim to have the service product** – we have seen local financial institutions open "life-line accounts" prior to a state legislative hearing on bank services, and then close them as soon as the hearing was safely behind them. We have been told by lenders they have a life-line, low fee checking account, but then when consumers go into the bank and ask for it they are told it is not available. This is not service that should be rewarded with CRA credit.

- Low and high satisfactory ratings must be possible overall ratings as well as ratings for the lending, investment, and service test of the large bank exam. Banks must be required to submit improvement plans subject to a public comment period if they have ratings of low satisfactory or below. Currently, banks are only required to submit improvement plans to their public file if they fail CRA exams.

- The Gramm-Leach-Bliley Act of 1999 prohibited banks with failing CRA ratings from expanding into the insurance and securities business. This provision of the statute must apply to the bank acquiring another institution as well as a bank being acquired. The Federal Reserve Board's interpretation of this provision allows a bank failing its CRA exam to be acquired by another institution. Under the Board's interpretation, a bank has little incentive to abide by CRA obligations if their chief executives and board are contemplating a sale of their bank.

The Maryland Center for Community Development believes that these suggestions for updating

the CRA regulation will produce CRA exams that are rigorous, performance-based, more consistent, and that are able to better capture the lending, investment and service activity of rapidly changing banks. These recommendations lead to enhanced enforcement of CRA.

This review of the CRA regulations is so vital that we urge the regulatory agencies to hold hearings around the country when they propose specific changes to the CRA regulation. It is vital that the federal banking agencies hear the diverse voices of America's communities as they consider a regulation that ensures that community credit needs are being met.

Thank you for your consideration.

Sincerely,

B. Sherblom

Becky Sherblom
Executive Director