



Small Business Finance

October 10, 2001

74

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

Re: Advance Notice of Proposed Rulemaking on CRA

To Whom It May Concern:

CDC Small Business Finance believes that the Community Reinvestment Act (CRA) has been instrumental in increasing lending and investing in San Diego and in many other communities around the country. 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.

The results of these changes to the CRA regulation have been significant. In our communities, CRA has been instrumental in increasing affordable housing and small business loans to those with capital access barriers. Specifically, through CRA CDC Small Business Finance has been able to make hundreds of small business loans to non-bankable credits that have resulted in significant community benefits.

To preserve and increase this progress in community reinvestment, the federal banking agencies must update CRA to take into account the 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.

Financial modernization was never intended to bypass the responsibility of all lenders to make credit available in all areas and to all populations where they are providing services. The CRA regulation now allows banks to choose whether the lending, investing, or service activities of their affiliates will be considered on CRA exams. We strongly recommend that the regulatory agencies mandate that all lending and banking activities of non-depository affiliates 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 also stops the manipulation of CRA exams and makes exams more consistent in their scope.

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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. CDC Small Business Finance believes that the CRA regulations must specify that a bank's CRA exam include all communities in which a bank makes loans whether directly or through affiliates.

The CRA regulations must be changed so that minorities and other historically disadvantaged groups are explicitly considered on the lending test. The Small Business Administration has been tracking this information for years without deleterious effects.

Some banks may seek to weaken existing CRA regulations and examinations through recommendations such as the elimination of the investment test on large bank exams or allowing more banks to qualify for the streamlined small bank exam and for the streamlined wholesale and limited purpose exam. The present CRA exams are reasonable and are not burdensome for banks. Allowing more banks to qualify for streamlined exams will simply weaken CRA enforcement.

We also urge the regulatory agencies to adopt the following recommendations:

- Do not allow purchases of loans to count as much as loan originations on CRA exams since making loans is the more difficult task.
- Retain the quantitative criteria 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 many quantifiable results, particularly if this replaces an existing activity that was producing significant results.
- Award the most points under the service test to banks that provide a range of **affordable** services to residents of low- and moderate-income communities.
- Add low and high satisfactory ratings as overall ratings as well as ratings for the lending, investment, and service test of the large bank exam. Banks should 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.
- Provide more points to banks for lending, services and investment activities tailored to the specific needs of the communities they serve. A one-size fits all CRA strategy is neither market responsive nor realistic. Large national or regional CRA activities should not substitute for locally based solutions to specific market conditions.
- Prohibit banks from setting hurdle return rates and terms for CRA investments. CRA is about access to credit, not maximizing returns to banks.
- Eliminate the "safe harbor" for Small Business Investment Companies that have no justifiable nexus to targeted populations or areas.

- Do not eliminate the investment test since many of these investments have led to the development of alternative innovative forms of debt and equity services and products that meet critical economic development needs.

CDC Small Business Finance believes that these recommendations will produce CRA exams that are performance-based, consistent, market responsive and result in maximizing the benefits and intent of the Community Reinvestment Act.

We also would urge the regulatory agencies to hold hearings around the country as specific changes to the CRA regulation are proposed. This will ensure that the federal banking agencies hear the diverse voices of America's communities with regards to meeting community credit needs.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt Chilcott', with a long horizontal flourish extending to the right.

Kurt Chilcott
President & CEO