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

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

Ms Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20219

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

Re: Advanced Notice of Proposed Rulemaking Regarding the Community Reinvestment Act Regulations

Dear Sirs/Madames:

Citigroup is a financial services holding company with a variety of depository institution subsidiaries, including national banks, federal savings banks and state nonmember banks, that are subject to the Community Reinvestment Act (CRA). This letter is written in response to the joint advance notice of proposed rulemaking (ANPR) seeking public comment as part of your review of the CRA regulations. 66 Fed. Reg. 37602 (2001). We appreciate being given the opportunity to provide our input to assist you in determining whether, and if so how, the CRA regulations should be revised. We are providing you with our comments in the order that the issues appear within the ANPR.

I. General Comments

The ANPR states that a fundamental issue for consideration is whether any change to the regulations would be beneficial or is warranted. We believe that overall the regulations work well and strongly recommend no change at this time. The continual and sustained increased industry-wide increase in lending, services and investments in low- and moderate- income areas that has occurred since the regulations were last revised shows that the current regulations are achieving their objectives. We have no reason to believe these trends will not continue.

We also agree with the comment that the benefit of any change should be weighed against the cost of effecting the change. Given that changes may be considered, we have reviewed the ANPR for possible proposals that we believe warrant further discussion. These are detailed below.

II. Specific Comments

A. Large Retail Institutions

As summarized in the ANPR, under the existing regulations large retail institutions are subject to the lending, investment and service tests. We believe that the regulations in their current form, as they relate to large retail institutions, work well.

One issue raised in the ANPR is whether lending should continue to be emphasized more than investments and services. We agree that shifting the weighting of the tests so that all three count equally would enhance the regulation. While we acknowledge that lending is a very important component of the CRA, we also believe that investments and services are equally important.

In some assessment areas, where there are large numbers of highly competitive banking institutions, availability of credit is not the primary concern. In these areas innovations in service delivery and creative investments are often relatively scarce. In order to make such communities strong, banks need to conduct activities such as financial education seminars for consumers, technical assistance for community-based organizations and investments in small business investment corporations, credit unions and others. These activities are as important as lending and should be given equal weight.

1. Lending Test

As discussed above, we believe that the lending test should not be emphasized over the service and investment tests. All three types of activities are needed by our communities and should have equal weight.

One aspect of the lending test discussed in the ANPR is that the regulations currently allow equal consideration for loan originations and purchases. Some assert that only loan originations should be considered in an institution's evaluation. Alternatively, some assert that originations should be weighted more heavily than purchases. In our view, the willingness to fund loans is just as important as the willingness to undertake the labor of originating loans. Moreover, it is widely recognized that loan purchases free up capital to the originating institution, thus enabling it to make additional loans, the clear intent of the Community Reinvestment Act.

We strongly believe that purchases must be included, and continue to receive equal credit with originations, in evaluating an institution's overall performance under the lending test. Purchases of loans in low- and moderate-income communities and to low- and moderate-income individuals serve an important capital markets function. They create liquidity in an otherwise illiquid market and enable financial institutions to better manage their capital.

The Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Association (Freddie Mac) were specifically created to increase this type of liquidity. They have been most successful in increasing the overall supply of credit in the mortgage market to the point where the homeownership percentage in the United States is the envy of the world. Loan purchases by FNMA and Freddie Mac are appropriately credited towards their affordable housing goals and lenders who compete with these institutions in purchasing loans must be given similar credit to ensure the continued and proper workings of the overall mortgage market, in general, and the specific segment targeted by CRA. Denying such credit to them would affect their participation in the market, which would reduce the overall availability of credit for home ownership, which is one of the principal objectives of the Community Reinvestment Act.

The line between originations and purchases is often immaterial. Loan purchasers undertake the same underwriting analysis that originators do before purchasing a loan, and are commonly involved throughout the loan origination process. Originators, in conjunction with the purchasers, typically structure their loan products to meet the specific requirements of consumers living in communities covered by the Act. These originators can often only afford to hold onto the loans they originate for only a short period of time before sale. These loans are then sold without recourse, thereby transferring the credit risk to the purchaser for the life of loan which, depending upon the loan product selected by the borrower, can be up to thirty years. In effect the loan originators are basically conduits between the homebuyer and the purchaser who essentially provides all of the funds. Under these circumstances, drawing any distinction between originations and purchases is artificial and places form over substance. Originators, which rely on lending institutions for funding though the purchase of their loans, serve homebuyers in areas and communities that purchasers may be unable to efficiently and effectively service. In addition, many small and family-owned mortgage originators have no capacity to service the loans that they make, which means that they must sell all of their originations on a servicing released basis. Eliminating CRA credit for loan purchases will dry up the market for their product, and will likely put many of these originators out of business, to the detriment of both the originators and the markets they currently serve.

Further, many institutions have made significant investments in their infrastructures to support the purchase and servicing of mortgages which, as we noted above, provides enhanced liquidity in these markets. Moreover, even if purchases were no longer given CRA credit, it is not necessarily true that those institutions would channel all of their funds into originations. (For example, some institutions lack the infrastructures or expertise necessary to become significant originators, particularly in the residential mortgage market.) As a result, eliminating CRA credit for loan purchases would have the effect of reducing the overall level of funds currently available for the residential mortgage market. Finally, eliminating credit for loan purchases is contrary to the provisions of the Community Reinvestment Act itself. The Act requires the banking agencies to determine an institution's record in meeting the "credit needs" of its communities. Credit needs can be met by both purchases and originations. Nothing in the Act supports or allows the banking agencies to restrict the method by which institutions will meet their communities' credit needs to originations.

We also disagree with the suggestion that purchased loans and mortgage-backed securities should be captured under the same test. Mortgage-backed securities are generally credit-enhanced, underwritten to a consistent set of guidelines, share similar terms and are viewed by purchasers as liquid investments. The contribution to the availability of funds for CRA purposes from mortgage backed securities should be evaluated under the investment test. Purchased whole loans, on the other hand, require financial institutions to conduct specific analyses of the individual borrower's credit and the collateral as well as the payback periods, terms, and structures in determining their capital allocation. Purchased whole loans each carry the risk of an individual mortgage, requiring the lender to rely on its own credit evaluation and the potential remedy against the borrower and/or security interest in a property. Purchased loans have a direct link to the individual borrower which does not exist in mortgage backed securities, and are by nature illiquid.

In the ANPR it is noted that some recommend that CRA examinations include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help meet community credit needs. While we agree 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.

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.

There is an evolving national consensus regarding the definition of "predatory" lending, and Citigroup is an active participant in building that consensus. However, that evolutionary process is not complete. Completing that process in the various forums where it is underway (Congress, the Home Ownership and Equity Protection Act (HOEPA) rulemaking, etc.) is more appropriate than here. Requiring analysis of "harmful" or "abusive" loans in the context of CRA before there is legal consensus defining those terms could lead to a myriad of subjective interpretations by individual CRA examiners. Any increase in uncertainty for the institutions that engage in mortgage lending will tend to discourage their participation in this business and result in additional expenses to the institutions and necessitate an increase in the cost of credit to the borrowers. It will also tend to reduce the amount of credit available by its chilling effect on those who make loans. Financial institutions are already subject to a bewildering array of state and local predatory lending laws. It would be inappropriate to include another level of predatory lending regulation through the CRA before a national consensus has evolved

We 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. The issuer of the L/C conducts the same analysis that a lender conducts and has the same credit exposure as a lender. L/Cs are treated as loans for other regulatory purposes, such as capital requirements and loans-to-one borrower limitations. Because letters of credit 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, we are able to make community development financing less expensive to the communities that need it most.

2. Investment Test

We agree with the statement 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. As a result, we also believe that it is appropriate for the agencies to continue to evaluate investments as a means of meeting financial needs.

We agree with the concern, raised by some, that the innovation and complexity elements of the investment test may lead to a constant demand to change programs, even where existing programs are successful, just to maximize CRA consideration. We want to ensure that existing qualified investments continue to get credit under this test, not just new/incremental investments. Patient capital is important in building capacity, so maintaining a portfolio of investments is imperative. In addition, it takes a long time for financial institutions to recover the cost on these types of investments; therefore, a longer time horizon should receive consideration under the CRA regulation.

3. Service Test

We agree with the proposal, made by some, 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, we have conducted several studies that demonstrate 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, we agree with the suggestion that the 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.

We agree with the suggestion by some that community development services, such as providing technical assistance on financial matters to nonprofit organizations serving low- and moderate-income housing needs, are not given adequate consideration under the current CRA Regulation. We also agree with the suggestion that this test should be evaluated within the context of other community development activities, as further discussed below.

4. Community Development Activities of Large Retail Institutions

In general, we feel that the definition of "community development" under the regulations works well. However, we agree with the assertion that the definition does not adequately value activities benefiting communities with a mix of incomes. We believe that it is important to build integrated communities with different types of people at many income levels. At the same time, we know it is counterproductive to apply rigid standards. For example, a requirement that the program must primarily benefit low- and moderate- income individuals discourages financial institutions from investing in programs because they can not demonstrate that they primarily benefit individuals below 80% of the median family income.

B. Limited Purpose and Wholesale Institutions

As stated in the ANPR, the community development test is the evaluation method used for limited purpose and wholesale institutions. Some question whether the definitions of "limited purpose" and "wholesale" are appropriate. We believe that the current definition of limited purpose/wholesale institutions should remain flexible to accommodate nuances in the structures of businesses. For example, institutions with very few branches, but significant assets generated from credit card lending, could more appropriately be examined under a community development test. Another example of a type of institution that would be suitable for evaluation under the community development test would be a bank with one or two branches in an assessment area but deposits generated from across the country.

Some question whether the community development test for wholesale and limited purpose institutions is as rigorous as the lending, investment, and service tests are for large institutions. We disagree with that viewpoint. We believe the standards are sufficiently high and the expectations of institutions to deliver tangible benefits to the assessment area are also appropriate. As mentioned earlier, we believe that the community development test may be appropriate for other institutions besides simply limited purpose and wholesale institutions.

C. Strategic Plan

In general, we believe that the strategic plan provides an effective alternative method for evaluating non-traditional financial institutions. It provides a greater certainty for non-traditional institutions and opens a dialogue between the institution, regulatory agency and community. As such, it should be retained as an option for these types of banks. However, to date few banks have been able to take advantage of this option. We recommend consideration of ways to streamline the strategic plan process.

We disagree with those that suggest that a strategic plan should be mandatory for certain non-traditional institutions. It should continue to be an option as it currently is under the regulations.

D. Performance Context

The ANPR states that some assert that the performance context provides a means to evaluate the qualitative impact of an institution's activities, striking the right balance between the quantity and quality of an institution's activity. We believe that performance context is a very important component in evaluating the CRA performance of financial institutions. It enables the institution to explain its community development strategy in light of its overall business strategy and market conditions. We further agree that the performance context helps to assess an institution's responsiveness to community credit needs and helps determine whether activities involving lower dollar amounts can be as or more effective than those involving higher dollar amounts.

We disagree with the assertion made by others that consideration of a performance context creates uncertainty and should become more quantitative. This defeats the purpose of performance context. Performance context gives examiners the ability to evaluate how institutions meet the needs of their communities based on a number of factors affecting lending, investment and service opportunities in the assessment area as well as any institutional constraints. The context can give meaning to the numbers and should be flexible enough to be adapted to changing conditions.

E. Assessment Areas

We believe that the assessment area delineation in the current regulations is the appropriate one and does not need to be changed. An institution is most familiar with the areas in which its home office and deposit taking locations are located and is in the best position to meet the credit needs in those areas.

We oppose the recommendation by some that institutions be required to delineate geographically defined assessment areas wherever they deliver retail banking services, whether or not they have physical deposit-taking branches or deposit-taking ATMs in each locale. It is extremely difficult to conduct community development activities in areas where institutions do not have people on the ground and, therefore, knowledge of community needs. Moreover, the premise that depository institutions should be required to assume a CRA obligation in communities where they do not have deposit-taking facilities is inconsistent with the policy rationale for CRA—that depository institutions have an obligation to serve the needs of communities where they gather deposits. Such a fundamental change in policy should be undertaken only by Congress.

F. Activities of Affiliates

As summarized in the ANPR, an institution may elect to have the activities of its affiliates considered as part of its own record of performance. We disagree with the assertion made by some that activities of affiliates, and in particular, subsidiaries of a depository institution, should always be considered in an institution's CRA rating. We believe that the way affiliates are currently treated is appropriate, given the "one affiliate, all affiliates" rule. This prevents financial institutions from cherry-picking affiliates to be evaluated. At the same time, it allows banks the flexibility to be evaluated based exclusively on their own activities if it is more appropriate.

Forcing institutions to count affiliates is inappropriate, particularly where those affiliates engage in businesses that are completely separate from the institution's business. 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. Banks are already prevented from using their structures to enhance their CRA ratings in the current regulation. The commentary states that where an examiner finds that an institution is making loans mostly to low- and moderate- income individuals and areas and referring the rest of the applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating.

We disagree with the contention that institutions opting for consideration of affiliate activities should have their CRA performance suffer as a result of "abusive" lending activities. As we already discussed, the term "abusive" is still evolving. The current regulations already provide for consideration of discrimination or other illegal credit practices.

We also disagree with the assertion by others that only the activities of an insured depository institution should be considered in its CRA evaluation. We believe that activities of affiliates such as mortgage and consumer credit companies should be evaluated if the bank has elected to have affiliate activity considered. Many institutions extend credit primarily though their lending affiliates, using those affiliates as vehicles to meet community credit needs.

G. Data Collection and Maintenance of Public Files

As stated in the ANPR, some indicate that collection of the required data and maintenance of a public file is burdensome and very few interested parties ask to see the public files. We agree with this statement. While we believe 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.

The ANPR indicates that some feel that investment data, as well as data on lending, should be collected and reported. We disagree with adding this additional reporting burden and do not believe it would provide the public with particularly useful information about investments because the time horizons on most investments are lengthy, for example ten to twelve years. Information on investments in each assessment area is updated during CRA examinations and the resulting public evaluations are readily available.

Thank you again for the opportunity to provide our comments. If you wish to discuss this further, please feel free to contact Jeffrey Watiker at (212) 559-1864 or me at (212) 559-2938.

Sincerely yours,

Carl Howard

Carl Howard

Cc: Pamela Flaherty
Jeffrey Watiker
Viola Spain