



## Lawyers' Committee for Civil Rights Under Law

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October 17, 2001

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Regulation Comments  
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Office of Thrift Supervision  
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RE: Community Reinvestment Act: Advanced Notice of Proposed Rulemaking  
Docket No. 2001-49 (Office of Thrift Supervision)

To Whom It May Concern:

The Lawyers' Committee for Civil Rights Under Law ("the Lawyers' Committee") is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The Lawyers' Committee is committed to improving lending opportunities for minorities and holding lending institutions accountable for discriminatory practices. As such, the Lawyers' Committee is very concerned about the continued vitality of the Community Reinvestment Act ("CRA"). While the CRA has played an instrumental role in increasing lending and investment opportunities for communities of color around the country, we believe the regulations governing the CRA must be updated to preserve and further the investment made to these undeserved communities.

Below are the Lawyers' Committee's specific comments regarding the advanced notice of proposed rulemaking:

I. CRA REGULATIONS MUST TAKE SUBPRIME LENDING INTO CONSIDERATION.

The Lawyers' Committee strongly believes that CRA exams must rigorously and carefully evaluate subprime lending. Redlining and predatory lending remain serious problems for minority and low-income communities. Accordingly, the CRA regulations need to be strengthened to combat those problems. While the CRA statute requires that lenders serve communities in a safe and sound manner, we believe that this requirement can be met while at the same time incorporating fair lending practices. Thus, any

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proposed rule should provide that CRA exams give primary emphasis to the lending test as a means to combat redlining and predatory lending. Moreover, CRA exams should 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.

Significant research has revealed that subprime lenders dominate lending in communities of color, thus providing those communities with few alternatives to high-cost refinance lending. Accordingly, CRA exams should provide an incentive to lenders to increase prime lending, which is more affordable for minority and low- and moderate-income borrowers, and would work as a disincentive for predatory lenders. For these reasons, the Lawyers' Committee believes that any proposed rule should require that lenders that make both prime and subprime loans must not pass their CRA exams unless they pass the prime part of their exams. In this regard, the Lawyers' Committee 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 lending statutes. This Question and Answer must become part of the CRA regulation.

**II. THE LENDING TEST SHOULD EXPLICITLY CONSIDER MINORITIES.**

The Lawyers' Committee also strongly believes that the CRA regulations must be changed so that minorities are *explicitly* considered on the lending test in the CRA exam as is currently done with low- and moderate-income borrowers. This modification will stimulate more prime lending in communities of color, thus further improving lending opportunities for minorities and decreasing discriminatory practices by lenders.

**III. CRA EXAMS SHOULD INCLUDE ACTIVITIES OF NON-DEPOSITORY AFFILIATES.**

The Lawyers' Committee also believes that the CRA regulations should mandate that the lending and banking activities of all non-depository affiliates must be included in CRA exams. Currently, banks can manipulate the accuracy of CRA exams by excluding affiliates if they make predatory loans or if they make loans primarily to affluent customers. Including affiliates in the CRA exam and expanding the assessment area to wherever a lender is chartered to do business (including non-branch platforms) will ensure a more accurate assessment of the CRA performance of banks that spread their lending activities to all parts of their companies, including mortgage brokers, insurance agents, and other non-traditional loan officers.

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IV. CRA EXAMS SHOULD MAINTAIN THE INVESTMENT TEST AND SHOULD INCLUDE COST OF SERVICES IN THE SERVICE TEST.

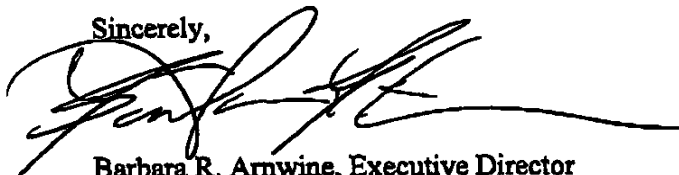
Finally, the Lawyers' Committee strongly believes that any proposed rulemaking to the CRA should maintain the investment test for large banks. This test ensures that banks make equity investments to minority and low- and moderate-income communities.

Furthermore, the cost of services must be a factor on CRA exams. High fee services by banks do not meet "deposit" needs and strip customers of their wealth and savings. This is especially so in low-income communities, many of which are also minority communities. The service test must award the most points to banks that provide a high number of affordable services to residents of minority and low- and moderate-income communities.

Accordingly, we urge the Board to update the rules governing the CRA consistent with our comments as set forth above. We believe that the changes advocated above will further enable the CRA to address pressing economic needs by increasing lending and investments to communities of color throughout the country. Should further explanation be required on any of the discussion points above, please feel free to contact Ms. Cheryl Ziegler, the Director of our Housing & Community Development Project. Ms. Ziegler may be reached directly at (202) 662-8331.

We thank you for soliciting and reviewing our comments.

Sincerely,



Barbara R. Arnwine, Executive Director