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October 15, 2001

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

RE: Community Reinvestment Act, Advanced Notice of Proposed Rulemaking

To Whom It May Concern:

Rural Opportunities, Inc. believes that the Community Reinvestment Act (CRA) and the 1995 changes in the CRA regulations have been instrumental in increasing access to loans and investments for the Rochester, NY community and around the country.

The Department of Treasury's study on CRA found that lending to low- and moderate-income communities are higher in communities in which banks have their CRA assessment areas than in communities in which banks are not examined under CRA.

Rural Opportunities, Inc. (ROI) is a member of the Greater Rochester Community Reinvestment Coalition (GRCRC), a coalition of over 30 organizations that has been working to improve lending in underserved communities since 1994. While the GRCRC has seen significant improvements in certain areas of lending in the Rochester, NY MSA since the 1995 CRA regulatory changes, there are other areas in which only small gains have been made. Mortgage lending to low- and moderate-income households has improved in the Rochester area. Home purchase lending in the city of Rochester, particularly conventional mortgage lending, has also improved since the mid-1990s. However, lending in minority and low-moderate income neighborhoods and total lending in the city of Rochester have not improved as significantly.

One of the main reasons the regulations were revised in 1995 was to move from process-oriented to outcome-focused CRA regulations that measured quantitative results. This was one of the major positive changes in the 1995 revisions. There is no need to retreat from the quantitative measures. In addition, the current balance between lending, investments, and services, with a primary focus on lending is appropriate and does not need to be revised.

However, to preserve the progress in community reinvestment, to improve lending for certain underserved communities, and to adjust to the rapidly changing financial marketplace, the federal banking agencies must update CRA.

+ *Migrant & Seasonal Farmworkers* + *Low Income Individuals & Families* + *Migrant Children* + *Farm Owners/People in Need of Emergency Services* +

+ *Women & Children at Risk* + *Low Income Renters* + *First Time Home Buyers* + *Small Business Owners* + *Community Based Organizations* +

If CRA exams hope to keep pace with the changes in lending activity, ROI strongly believes that CRA exams must rigorously and carefully evaluate subprime lending. According to data analyses by the GRCRC, the Rochester community has seen a huge increase in subprime lending between 1996 and 2000. Estimates by Freddie Mac and Fannie Mae indicate that between 30 and 50 percent of those with subprime loans could have obtained a prime loan. ROI specializes in finding, educating and counseling low-income first-time homebuyers in small, rural communities. Many of our first-time homebuyers have been able to realize their dreams of home ownership by combining low-interest, long-term mortgage funds from USDA with non-amortizing second mortgages from ROI. Some of our homebuyers have reported that they have been approached by sub-prime and predatory lenders to refinance their one per cent, 33 year mortgages, ostensibly in order to consolidate debts and improve cash flow!

Lenders should be encouraged to make as many prime loans as possible since prime loans are more affordable for low- and moderate-income borrowers and since there is significant evidence that too many creditworthy borrowers are receiving over-priced subprime loans. CRA exams should provide an incentive to increase prime lending by stipulating that lenders that make both prime and subprime loans will not pass their CRA exams unless they pass the prime part of their exams. ROI 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 must become part of the CRA regulation.

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. ROI opposes the elimination of the investment test since there are many pressing needs for investments in low- and moderate-income communities. As a result of the investment test, the Rochester community has benefited from banks' local community development and investment activities. For example, ROI and its CDFI affiliate, Rural Opportunities Enterprise Center, Inc., have received loans, investments and grants from several banks. These funds have been used to provide credit to small and micro businesses, particularly those operated by low-income individuals and those operating in remote rural areas. Many of the businesses assisted by ROI and ROECI would never have accessed traditional credit; because of the banks' investments and ROECI's efforts, over 250 small and micro businesses are contributing to their local economies and to the revitalization of their communities.

Some banks will also urge that more banks be allowed 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 urge the regulatory agencies to adopt these additional policies:

- Purchases of loans must not count as much as loan originations since making loans is the more difficult task.

- 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 that does not produce much in terms of volume.

- The Federal Reserve 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 level of borrower and census tract.

- 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.

- The CRA regulations now allow banks to choose whether the lending, investing, or service activities of their affiliates will be considered on CRA exams. Banks can elect not to include affiliates on CRA exams if they make predatory loans or if they make loans primarily to affluent customers. Rural Opportunities, Inc. 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.

- 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 reinvestment performance in geographical areas where banks have 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. ROI believes that the CRA regulations must specify that a bank's CRA exam will include communities in which a **significant proportion** of a bank's loans are made.

Finally, Rural Opportunities, Inc. believes that special attention must be paid to the needs of rural communities, and the role of community banks in serving rural communities. ROI urges the regulators to strengthen the CRA regulation for small banks. While small banks have recently won regulatory concessions (in Gramm-Leach-Bliley in particular), there is a good deal of evidence those small banks' records of the meeting the credit needs of their communities are often inadequate. Virtually all of the "Needs to Improve" and "Substantial Non-compliance" CRA ratings in recent years have gone to banks with less than a billion dollars in assets. Even though they are examined with less rigor, banks examined under the small bank CRA exam have accounted for more than their share of less than satisfactory CRA ratings. A review of small bank CRA exams will show that banks with loan to deposit ratios as low as 40% regularly receive satisfactory CRA ratings. Even in states in which the average loan to deposit ratios for banks are in the 80 -100% range, 40 and 50% loan to deposit ratios are almost always described by examiners as "reasonable" without any evidence of extenuating circumstances provided.

ROI recommends that regulators establish more objective criteria in the small bank exam. For example we would propose that small banks with a loan to deposit ratio that is less than 75% of their state average be assumed to have less than satisfactory CRA ratings unless specific extenuating circumstances are documented in the CRA evaluation. Likewise benchmarks should be established for the percentages of loans in the assessment area and loans to low and moderate-income borrowers. Specific benchmarks would make CRA evaluations more objective and less subject to grade inflation even if examiners retained some flexibility to deal with individual circumstances.

In addition NCRC would recommend to the examiners that that the CRA regulation's current treatment of assessment areas be re-worked to provide more protection for rural areas. Often the largest financial institutions have assessment areas that skip from one metropolitan area to the next without acknowledging the rural areas between. With the current efforts by many large financial institutions to expand their subprime lending capacity this issue has taken on critical importance. A company such as Citigroup, for instance, can purchase a subprime lender like Associates (which has an extensive rural network) and never acknowledge those rural communities as part of its assessment area. As a result, the residents of those rural communities get swamped with subprime solicitations from major financial institutions, but do not have the benefit of competition on the prime product level. Rural communities should have some way of calling attention to this form or redlining; requiring financial institutions to include counties and communities in which their non-bank affiliates do significant business as part of their assessment area would help protect rural areas from these types of abuse.

ROI believes that our 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.

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 regulations. 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,

Lee Beaulac
Sr. Vice President of Housing and Economic Development

cc: Ruhi Maker, Esq.
John Taylor, President, National Community Reinvestment Coalition