January 24, 2005

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

Attention: No. 2004-53 & 2004-54

To Whom It May Concern:

I am writing on behalf of the Sargent Shriver National Center on Poverty Law (Shriver Center) to comment on the proposed changes to the regulation of the Community Reinvestment Act (CRA). The Shriver Center is a 37-year-old Chicago-based nonprofit legal and advocacy group that represents low-income people on state and federal policy issues, including community reinvestment policy. The Shriver Center has been actively involved in financial education and asset building programs in collaboration with financial institutions, regulators, nonprofit organizations, and others through the Financial Links for Low-Income People (FLLIP) coalition for several years.
We believe that the proposed small bank and lending changes to the CRA regulation will significantly limit opportunities for unbanked, underserved, asset poor, and vulnerable low-income consumers in Illinois and throughout the country. We are members of the Chicago CRA Coalition and the National Community Reinvestment Coalition and support their comments as well.

Small Bank Limits

By changing the definition of "small bank" from any institution with less that $250 million in assets and not part of a holding company with over $1 billion in assets to include all institutions with less than $500 million in assets regardless of holding company size, the proposed rule would dramatically increase the number of banks considered "small" that, for CRA purposes, are not examined for their levels of community investment and services under the streamlined small bank CRA examination. The proposed changes would reduce the rigor of CRA exams for 1,111 banks that account for more than $387 billion in assets.

This change would disproportionately affect rural communities and small cities where smaller institutions have significant market share. In Illinois, it would reduce the number of institutions covered by the comprehensive CRA exam by 63 percent, from 198 banks to 74. In rural Illinois areas or small cities, the number of institutions covered by comprehensive CRA will decline by nearly 73 percent. In the absence of the CRA services and investment tests, these banks would be less motivated to develop innovative products and services and to make grants and investments in needed programs such as financial education, individual development accounts, and free tax counseling.

In addition, under the proposed change, these banks would no longer be required to report small business lending data. This would significantly reduce available data on small business lending despite the fact that it has been shown that small banks have a larger share of their lending dedicated to small businesses than larger banks.

By removing the holding company threshold from the definition of small bank, regulators would not only reduce the number of institutions covered by comprehensive CRA, but also create a potential loophole for large holding companies to re-form their banking subsidiaries as a series of local "small banks" to avoid comprehensive CRA examinations. For example, Harris Trust and Savings currently has 26 separately chartered institutions in the Chicago area totaling over $30 billion in assets. Of these institutions, 19 would be considered "small" under the new CRA regulation despite being part of Bancmont Financial Corp, a holding company with over $39 billion in assets in the United States. Of those Harris institutions not covered, at least three serve communities with significant low-income or minority populations. Although we do not have reason to believe that Harris structured its holding company to evade CRA compliance, holding companies could use this structure as a model to avoid significant compliance with CRA under the proposed rule change.

Affiliate Lending

As bank holding companies increasingly use non-bank lenders, including subprime lenders, to originate mortgages, it is critical that all lending affiliates be required to report lending in an institution's CRA exam. The proposed rule fails to require that affiliate lending be considered in CRA exams. Instead, the CRA regulation allows banks to choose which affiliate loans in a given assessment area they want to apply toward the lending test. This allows institutions to cherry pick the best lending affiliates for each assessment area and exclude affiliates in assessment areas where those affiliates might not be adequately serving the community. This loophole must be closed. All lending affiliates must be considered in CRA exams.

Assessment Areas

As policies have changed to allow financial institutions to conduct business through channels other than traditional branches, CRA policy has not kept pace. The proposed rule fails to include in assessment areas all areas in which the bank receives significant deposits or conducts significant lending. A recent Woodstock Institute publication illustrates that insurance banks conduct over 75 percent of their lending outside of their CRA assessment areas. The rule should be changed to recognize assessment areas based on where the bank conducts business.

Predatory Lending

The proposed standard provides that loans originated based on foreclosure value of collateral rather than borrower ability to repay can negatively affect a bank's CRA exam. This weak standard fails to take into account numerous predatory practices such as packing exorbitant fees onto mortgage loans, loan flipping, charging high prepayment penalties, and mandatory arbitration, that can strip equity from homeowners and trap borrowers in abusive loans. Regulators should apply a stronger standard to bank loans and to loans made by affiliates.

Data Disclosure

The proposed additional data disclosure requirements on census tract location of small business loans are a good start. The data must be fully considered in evaluations to be truly effective. However, the benefit of this additional data would be partly offset by loss of data for banks that would be considered "small" under new criteria. These lenders are significant providers of small business loans, and the loss of this data would create a significant gap in available data. Adding data to CRA exams to differentiate between the share of bank and affiliate loans that are originated and purchased and those which are high interest rate and HOEPA loans is also positive step, but these loans should not be weighted equally. Originated, lower interest rate, and non-HOEPA loans, should be given more weight.

Your proposal will result in considerably less community development financing and basic banking services in low- and moderate-income communities. You would allow thrift institutions to design their own watered-down Community Reinvestment Act (CRA) exams. The thrifts could eliminate the investment and service parts of the CRA exam, meaning that you would not require them to make investments in or provide branches to low-and moderate-income communities. At the same time, your proposal would allow thrifts to finance community development of affluent communities, not lower income neighborhoods, in rural areas and areas afflicted by natural disasters. This is contrary to the purpose of CRA to combat redlining of low- and moderate-income communities. You also propose to reduce opportunities for community groups and citizens to meet with thrifts and your agency to discuss CRA and anti-predatory lending issues when thrifts are merging.

Thank you for the opportunity to submit these comments. Please contact me with any questions at 312.368.2007 or doryrand@povertylaw.org.

Sincerely,

Dory Rand
Supervising Attorney, Community Investment

cc. National Community Reinvestment Coalition