



Consumer Federation of America

January 24, 2005

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

Attention: Proposed regulations -- No. 2004-53

To whom it may concern:

The Consumer Federation of America (CFA) is writing to urge that the Office of Thrift Supervision (OTS) withdraw the proposal to loosen the definition of community development activity for the purposes of the Community Reinvestment Act (CRA) regulations. This proposal would permit thrift institutions to receive CRA credit in rural areas regardless of whether these activities provide any benefit to low and moderate income consumers. We also write to express our reservations to the approach your agency is contemplating to permit large thrift institutions to tailor their own individual CRA performance standards for compliance examination purposes. These changes, along with previous OTS rule changes that have reduced CRA standards for small thrifts, run completely counter to CRA's intent and work to undermine the law's effectiveness.

CFA is a national association whose membership is comprised of over 300 national and local consumer organizations representing some 30 million consumers established to promote consumer interests through public education, research, and advocacy. (www.consumerfed.org) CFA and our member organizations have had a long-standing interest and commitment to the preservation of a strong CRA, a law that has helped to curb redlining and promote expanded consumer access to responsible lending and financial services.

CRA was enacted to encourage banks and thrifts – insured depository institutions -- to reach out to serve all parts of the communities they are chartered to serve, particularly underserved low and moderate income areas. The federal government and others who have researched the experience with CRA have found that depository institutions covered

by this law have demonstrated a significantly larger commitment to low and moderate income geographic areas and consumers than have other non-depository financial institutions. CRA also provides regulatory encouragement for banks and thrifts to maintain and expand branch networks that serve low and moderate income populations and to spur the provision of flexible deposit accounts to these markets. Yet CRA's success is highly dependent upon vigorous enforcement, which starts with comprehensive and effective examination procedures to measure bank and thrift performance.

CFA fears, that whatever the intent, both of the proposals discussed in this NPR would result in substantial reductions in the lending and other financial services available for the neediest segments of our society. The dilution of CRA standards along the lines proposed would work to turn CRA enforcement back to the pre-1995 days, when the CRA standards were more arbitrary and not particularly performance-based, and the law was often ineffectively implemented, which limited its impact for low and moderate income consumers and communities.

Through this Notice of Proposed Rulemaking (NPR) OTS seeks comment on two different revisions. The first is proposed as a specific rule change that intended to loosen the current community development definition for CRA purposes for rural areas. The second change the OTS indicates it is contemplating would radically alter the way that a "large" thrift institution's (with more than \$1 billion in assets) CRA rating is assigned. No specific rule revision is proposed; instead comments are requested to a series of questions contained in the NPR. Consequently, it appears that a subsequent NPR to this one will be necessary before changes to the three part large institutions exam can be made.

The proposed rule changes enable thrifts to turn their back on low and moderate income household and communities in rural areas

The OTS is proposing in the NPR to revise the definition of "community development" to include "community services targeted to individuals in rural area, and activities that revitalize or stabilize rural areas" regardless of the impact to low and moderate households or communities. This change enables thrifts of all sizes to get "CRA credit" for their participation in virtually any activity labeled community development, from the financing of luxury housing to the development of country clubs, golf courses and tennis facilities so long as such activities are claimed to "revitalize or stabilize" rural communities. However, by proposing a rule change that allows virtually any and all activities to count, the agency is really saying that no activity, no matter how much needed, especially counts for CRA grading purposes.

The practical effect of this change, therefore, is to weaken CRA as a tool for promoting more financial activity and capital investments for projects that benefit low and moderate income households and communities not otherwise served through the normal functioning of the market. The rule change also means that thrifts will be permitted to meet their CRA obligations by collecting the "low hanging fruit" in rural communities, while avoiding serving the most difficult activities often associated with the needs of

economically distressed families.

Further, this change has the additional effect of allowing thrifts that serve both rural and urban areas to reduce their commitments to low and moderate income households in urban areas in preference to providing support for projects that primarily benefit wealthy households and communities in rural areas.

In fact, revising CRA rules in a manner that takes de-emphasizes low and moderate income consumer and community needs runs contrary to the intent of the Congress when CRA was passed. There also is no statutory basis for providing for different treatment for urban and rural communities, nor has the OTS provided an analysis that would support a policy justification for distinguishing between the standards used for these different geographic areas.

Large thrift institutions should not be able to avoid meeting their retail banking services and community investment responsibilities

Equally troubling is that the OTS is also contemplating making a wholesale departure from the traditional method for ratings large thrift institutions. The NPR requests comments on changing the CRA rating methodology for large thrifts with more than \$1 billion in assets. Presently these institutions are required to meet a "three-part" CRA test as part of their examination, which consists of a lending test, service test, and an investment test. The OTS indicates that it may scrap the three-part exam and replace it with a rating method that enables lenders to choose for themselves what extent they wish to be evaluated on the level of their retail banking services and investment provided to lower income households and communities. Such a change, in effect, would mean that many of the nation's largest depository lenders could design their own performance standards, presumably weaker than presently required, and thus all but assuring a satisfactory or higher CRA grade each time they are examined.

Allowing large thrifts to choose between lending, retail services, and investments is likely to work as a disincentive for these institutions to devote resources to difficult projects and activities, in preference to performing easier ones. As a consumer organization, we fear that under such an approach would allow thrifts to decide to drop or significantly reduce the retail service test component. It would provide less inducement for thrifts to maintain and open new branches and ATM facilities for underbanked areas. Moreover, without the emphasis on retail bank services provided by this test residents of low and moderate income areas would be forced to rely even more on payday lenders, check cashing outlets, and other high cost services. The change also works at cross purposes with recent regulatory policy that clarifies that thrifts can receive CRA credit by providing remittances services under the retail services test. (See June 3, 2004 letter from four banking regulatory agencies to Representative Frank.) Thus, the big winners from the contemplated change would be the fringe bankers and the losers the many consumers left with no where else to turn for critical banking services.

Similarly, CFA has concerns about how the investment test would fare under this new

system. Thrifts also could choose to eliminate or minimize this test as well which likely will mean a devastating reduction in the investment support provided by thrifts for investments in the Low Income Housing Tax Credit and other investment vehicles that are indispensable to the financing of affordable rental housing. Moreover, doing away with the investment test component is likely to harm large thrift support for non-profit community development financial institutions (CDFIs), which frequently partner with depository lenders to plug important gaps in providing financing for lower income household and community needs.

Another harmful effect is that by allowing large thrifts to base their entire CRA grade on lending it could mean that these institutions would be able to achieve satisfactory or outstanding ratings without developing a direct presence in low and moderate income communities. The CRA rules presently do not require financial institutions to conduct direct lending to receive CRA credit. Instead, purchased loans from third parties are afforded equal consideration with loan originations. However, purchased loans do not require a direct presence in low and moderate income communities and may be traded several times over from lender to lender for CRA purposes. Purchased loans also more likely to open the door on loans with predatory terms and conditions, not easily detected through the normal examination procedures. Loopholes such as these are a reminder of the potential unintended consequences that could be set into motion should the OTS act in this area.

Finally, perhaps what is most disturbing aspect of these proposals is that they appear to represent only the latest in a series of actions taken by the OTS that are likely to have adverse consequences for many consumers. This past summer, the OTS chartered a unilateral course from the other banking regulators to raise the asset threshold for small institutions subject to the streamlined CRA examination. This action reduced the number of thrifts covered by the full CRA exam. In 2003, the OTS became the first banking agency to pre-empt the institution it supervises from complying with state consumer anti-predatory mortgage lending laws, although federal standards clearly are inadequate in this area. Further, this past October 2004, the OTS issued a legal opinion arguing that the Home Owners Loan Act (HOLA) preempts the application of certain state laws also to certain third party "agents" of federal thrifts (which could mean mortgage brokers). All of these actions serve to weaken CRA and state consumer protection standards or convey the impression of an agency that is operating with a strong disregard to consumer needs and concerns.

This need not be the case. While CFA opposes rule changes proposed in this NPR, at the same time we recognize that improvements to the CRA exam are needed in light of the experience with the rules over the past decade, the changing industry structure and important shifts in the way that financial services are delivered to the public over this time period as well. However, rather than seeking ways to revise the rules in a consensus building manner, the OTS continues to act in a unilateral and divisive manner, which only works to drive additional wedges between the different CRA stakeholders. We believe such an approach to rulemaking is both unnecessary and ultimately, self-defeating to the best interests of the industry and consumers alike.

Again, for these and other reasons we urge that this proposal be withdrawn.

Sincerely,

Allen J. Fishbein
Director of Housing and Credit Policy
Consumer Federation of America

1424 16th Street, NW Suite 604
Washington, DC 20036

202-387-6121
afishbein@consumerfed.org