



STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

January 19, 2005

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attention: Nos. 2004-53 and 2004-54--Comments to Proposed Revisions to
Community Redevelopment Act Examination Regulations

To Whom It May Concern:

As the Attorney General for the State of California, I am writing to urge the Office of Thrift Supervision (the "OTS") not to adopt two of its proposed revisions to its Community Reinvestment Act (the "CRA") regulations, and to respond to OTS's request for comments on other potential revisions. The CRA is the primary law that requires federally regulated savings associations ("thrifts") to serve the needs of low- and moderate-income communities. It has therefore been crucial to improving the lives of those who inhabit the poorest California communities by increasing the stock of low-income rental housing, increasing home and small business ownership, and encouraging economic development. I am concerned about the OTS's proposed revisions primarily because they will reduce the thrifts' obligations to serve such needs and adversely impact minority, immigrant, and other communities most in need of community development services.

There are 34 federally chartered thrifts in California, which have combined assets of \$528 billion (compared to a nationwide average of \$1.2 billion in assets). The OTS proposals addressed herein will severely dilute the CRA's effectiveness in California by allowing these large and wealthy thrifts to neglect the needs of low- and moderate-income neighborhoods and even boost their CRA ratings by serving affluent rural neighborhoods.

The OTS's first proposal will allow thrifts to completely ignore the community development needs of low- and moderate-income communities without any negative impact to

their CRA ratings. Specifically, the OTS proposes to broaden the definition of community development activities that meet CRA requirements to include (1) the provision of community services to individuals in rural areas, or (2) activities that revitalize or stabilize rural areas. The OTS has not included any requirement that such rural areas encompass low- or moderate-income communities.

This proposal directly contradicts Congress's intent in enacting the CRA. Because investment in poorer communities can be risky and does not always result in profit, financial institutions are less motivated to provide services to those communities. Congress therefore enacted the CRA to supplement the usual market-driven motivations for investment, recognizing that such neighborhoods need community development assistance from financial institutions in order to thrive and grow. The additional motivation provided by the CRA is not necessary in the context of wealthy rural communities--these communities are able to attract community development money, precisely because such investment is far less risky and is more likely to result in profit. Thus, allowing thrifts to enhance their CRA ratings by meeting the community development needs of affluent rural neighborhoods does not comport with Congressional intent, but instead flies in the face of the whole purpose underlying the CRA.

In its second proposal, the OTS proposes to revise its meeting procedures, such that community organizations and other interested parties, including state and local government agencies, will no longer be entitled to any meeting, formal or informal, with the OTS about thrift applications that may have long-lasting and serious consequences for the effected communities. Instead, the OTS will, in its sole discretion, have the authority to grant or deny a request for only one meeting.

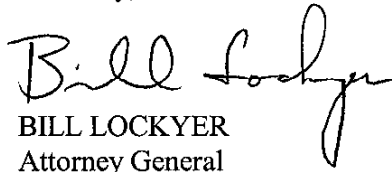
Today, most thrift applications concern mergers with other thrifts. When such mergers are proposed, low- and moderate-income communities are justly concerned about the proposed larger thrift's commitment and ability to meet their CRA needs. Meetings among the OTS, the thrift, local government agencies, and community organizations afford such organizations the opportunity to discuss critical matters with the OTS and the thrift, such as a thrift's predatory lending history, special community needs that the thrift should agree to address, the thrift's commitments to maintain existing branch locations and low-cost services, etc. Indeed, because such organizations are located within the effected communities, they can offer a perspective that the thrifts themselves are unable (or unwilling) to offer. In addition, these meetings offer a unique opportunity for all the interested parties to come together to discuss their mutual interests. As a public agency, the OTS should not shirk its duty to listen to the public that it is obligated to serve. And, as a regulator, it has a duty to ensure that the thrifts continue to serve the needs of under-served communities.

The OTS has also solicited comments on potential proposals, one of which is of particular concern to low- and moderate-income communities. The OTS is seeking comment on allowing thrifts to, in essence, design their own CRA exams. The OTS is considering whether to allow thrifts to choose the weights given to lending, investment, and service performances at the start of each CRA exam. Each thrift would be required to give its lending exam results a minimum weight of 50%, but may choose to weight the lending exam results up to 100%. (69 F.R. at p. 68262.) Thus, a thrift could eliminate its investment and service exams—and ignore the service and investment needs of low- and moderate-income communities without any impact on their CRA ratings. In other words, the OTS thrifts would be able to entirely opt out of service and investment exams.

It is not difficult to imagine the poor outcomes that could result from this kind of CRA examination process. If thrifts eliminate their investment tests, they will no longer have any obligation to invest in community development through, for example, affordable rental housing for low- or moderate-income families or equity investments in small businesses in those communities. At the same time, thrifts could eliminate their service tests, and avoid placing or maintaining branches in low- or moderate-income neighborhoods. They could also refuse to provide low-cost banking services. By eliminating these types of services in the most vulnerable neighborhoods, more abusive lending and banking services will proliferate, including payday loans, check cashing stores, tax refund anticipation loans, auto title loans, and scores of other high cost services these communities can ill afford.

Overall, the OTS's proposal will hinder, rather than further, the CRA's statutory purpose of obligating thrifts to meet the community development, investment, and service needs of the communities in which they are chartered. This proposal will most likely cause federally chartered thrifts in California to dramatically reduce services desperately needed by many immigrant, minority, and low- and moderate-income communities, including loans and investments in home ownership, small businesses, small farms, affordable rental housing, health clinics, community centers, and economic development projects. I therefore urge the OTS not to adopt the above-described proposed revisions to its CRA examination regulations.

Sincerely,


BILL LOCKYER
Attorney General