January 20, 2005

Filed by E-mail
Regulation Comments
Chief Counsel's Office
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Attention: No. 2004-53

RE: Community Reinvestment Act - Community Development, Assigned Ratings
69 FR 68257 (November 24, 2004)

Ladies and Gentlemen:

We appreciate this opportunity to comment on the OTS' proposed rulemaking regarding the Community Reinvestment Act, or CRA. As discussed below, we support the OTS proposal to revise the exam matrix and urge the OTS to make it final.

The purpose of CRA was to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

The CRA was to address concerns that banks were not taking adequate steps to make credit available to consumers and businesses in lower and moderate income areas. The idea of the CRA was simple. Each institution would meet the credit needs of its community by making loans to all income segments of the community, including to persons who traditionally had more limited access to bank credit. Community reinvestment and lending were synonymous.

The CRA did not establish any hard and fast rules for the CRA examination process. Congress instead instructed the regulatory agencies to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution. Implicit in this instruction was that the regulators were to give due consideration to the unique factors applicable to each depository institution, taking into account regional differences and the varied business models and product offerings of each institution. Also implicit was that each institution's performance in meeting the needs of its community was to be judged in accordance with the principle that lending is the primary vehicle for meeting a community's credit needs.

Somewhere along the way, however, the idea that institutions are to support their communities through lending has become blurred. It has become so blurred that some commentaries concerning the OTS proposal characterize the CRA statute as *requiring* institutions to engage in specific types of investment and service activities, such as making equity investments in small businesses, giving grants to community organizations, or participating in housing tax credit transactions. This view of the CRA fails to consider whether institutions even have expertise in such alternative activities, or that they might be meeting their communities' needs through their direct lending activities as Congress intended. These commentaries instead make it seem as if the investment and service tests were the goals in and of themselves.

The investment and service tests came about because some institutions were not substantially engaged in consumer and/or business lending or were engaged only in niche business lines that could not be offered widely within their designated service areas. For example, an institution specializing in issuing credit cards to foreign nationals from its only branch office located on a floor of a downtown high rise could hardly meet its CRA obligations satisfactorily through traditional lending. Out of necessity, institutions in such situations sought flexibility in the initial CRA regulations to use indirect methods to satisfy their CRA obligations. Later, what had begun essentially as accommodations for special purpose banks (or others seeking alternatives to lending) became independent CRA regulatory tests and were imposed on institutions that in fact already were doing everything that the CRA intended through direct lending. This should be corrected.

The chief problem with the current CRA regulations is the arbitrary nature of the assigned ratings system, especially the fact that the regulations cap lending at 50% of an institution's overall assessment. This cap generally is too low for traditional depository institutions such as Provident that are primarily if not exclusively engaged in traditional lending activities.

Moreover, the current CRA regulations have the effect of forcing depository institutions to engage in activities in which they have no substantial experience. This diverts institutions' resources away from making loans directly to low- and moderate-income borrowers. Provident's expertise is in the making of home loans and servicing those loans is the highest and best use of our resources. But because the current ratings system assigns a 25% weighting to the investment test and another 25% to the service test, we and similar institutions must venture into CRA activities that are not otherwise part of our core residential mortgage lending business.

It is appropriate to require that at least 50% of the CRA assessment be based on the lending test, but it should also be permissible for up to 100% of that assessment to be based on lending performance. This regulatory change would best conform with Congressional intent.

The rigid weighting of the investment and service tests is not required or even suggested by the statute, has the effect of reallocating community reinvestment dollars and other resources away from more effective direct lending activities, and fails to take into account the fact that depository institutions should be allowed to deploy their expertise and resources in the most effective way possible in fulfilling their CRA responsibilities.

We believe that preserving the investment and service tests in the way OTS has proposed will provide appropriate flexibility for lending-focused institutions, while also allowing still greater reliance on these tests by other institutions that are less focused on lending.

Thank you for the opportunity to comment on this proposal.

Sincerely,

CRAIG G. BLUNDEN
President
Chief Executive Officer