

Habitat for Humanity International
The Washington Office
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Washington, D C 20005

TO: Chief Counsel's Office, Office of Thrift Supervision

RE: Comments on OTS NPR on Community Reinvestment Published November 24, 2004

Rule No. #2004-53 (RIN #1550-AB48)

DATE: January 24, 2005

Mission of Habitat for Humanity International

Habitat for Humanity International (HFHI) is a non-profit organization with 1,689 community-based affiliates in the United States. Habitat for Humanity's mission is to build or rehabilitate simple, decent, affordable homes with very low-income families in need of housing, and to eliminate substandard housing from the face of the earth. In this role, HFHI affiliates are the recipients of certain types of benefits under the Community Reinvestment Act requirements, which is why HFHI is submitting comments on this proposed regulatory change.

Summary of Proposed Rule

The Office of Thrift Supervision (OTS) is proposing revisions to 12 CFR Part 563e, regulations implementing the Community Reinvestment Act (CRA), that would: (a) change the definition of "community development" in rural areas to give credit to savings associations that either provide community services for rural areas or conduct activities that revitalize or stabilize rural areas, regardless of whether the beneficiaries are moderate- or low-income; and (b) change the weights in the CRA ratings test by permitting the "large retail" savings associations to decide what CRA activities (investments, lending or services) their communities need, with the only requirement being to give a minimum 50% weight to lending.

General Comments

Habitat for Humanity International does not have expertise on banking regulatory matters or familiarity with any burden on savings associations of complying with the current regulations, so it does not intend to comment on those issues. However, HFHI affiliates have been able to provide the American Dream of homeownership to more families as a result of benefits received from local savings associations under the Community Reinvestment Act.

It is the understanding of HFHI that the Administrative Procedure Act requires a cost/benefit analysis to be a part of any proposed rulemaking. The preamble states that the purpose of the proposed changes is to “reduce burden” to, and create “greater flexibility” for, savings associations. What data does the OTS have to prove that the current CRA rule is costing the regulated institutions significant amounts of money or that the proposed revisions will save them money? Indeed, the financial institutions subject to these regulations recommended, in response to the July 2001 Advance Notice of Proposed Rulemaking, that any change to the regulations take into account both process costs and the benefits of change (69 FR 5729, February 6, 2004, at 5731). Further, has OTS analyzed any economic data about what the negative impact of change might be on rural communities?

HFHI contends that the proposed changes would have a devastating effect on rural communities across the United States. OTS has not proved to the public that any claimed “burden” to savings associations outweighs the loss of benefits to rural communities. HFHI does not see any indication that the following data were compiled or analyzed by the OTS - the potential lost benefits to rural communities from no longer requiring savings associations to comply with the full range of CRA requirements. HFHI urges the OTS to conduct a study of the potential lost benefits to rural communities, including consultations with those communities, and publish it in the Federal Register before considering such a major change to its regulations.

Section 563e.12(f)(2) and (4), Revised Definition of “Community Development” for Rural Areas

HFHI affiliates have been receiving the following types of benefits from local savings associations, in both rural and metropolitan areas, for which those institutions have received CRA credit under various regulatory tests:

- Reduced interest and waiver of fees on lines of credit and vehicle loans for the affiliate;
- “Pro bono” mortgage servicing on Habitat homeowner mortgages;
- Donations to local affiliates; and
- Provision of office space, administrative services, and printing.

The proposed revision would change the definition of “community development” to give credit to savings associations that either: (1) provide community services targeted to low- or moderate- income individuals **or to any individuals (regardless of income)** in rural areas; **or** (2) conduct activities that revitalize or stabilize rural areas -- **regardless of whether the beneficiaries are moderate- or low-income**. HFHI is pleased that the definition still contains credit, in paragraph 1 of the current definition, for “affordable housing... for low- or moderate- income individuals.” Since HFHI has many affiliates in rural areas working to eliminate substandard housing, it supports giving CRA credit to savings associations doing activities that: (1) provide community services to rural areas; (2) revitalize or stabilize low- or moderate-income housing in rural areas; or (3) support affordable housing for low- and moderate- income individuals.

However, the proposed revision to the definition would permit CRA credit for activities in rural areas that are not focused on low- or moderate-income individuals. Under the proposed definition, it is possible that a savings and loan organization supporting a development designed for affluent individuals, but located in a rural area, could receive CRA credit, simply because it is located in a rural area or is claimed to be “stabilizing” a rural area. If that is the potential result of the revised definition of “community development,” HFHI respectfully suggests that such a result is not within the original goals of the Community Reinvestment Act.

Section 563e.28(b), Changes to the Weights in the CRA Rating Test

The proposed revision would change the weights in the CRA ratings test by permitting the “large retail” savings associations to decide what CRA activities (investments, lending or services) their communities need, with the only requirement being to give a minimum 50% weight to lending. HFHI affiliates normally do not obtain loans from savings associations (except for the affiliate’s operating expenses in some cases) because the affiliate usually acts as the lender for its homeowners. Thus requiring that a minimum 50% weight be given to lending would not benefit HFHI affiliates significantly, although it would benefit the community. The benefits that HFHI affiliates have been receiving under the CRA -- such as reduced interest and waiver of fees on lines of credit and vehicle loans; “pro bono” mortgage servicing on Habitat homeowner mortgages; and donations to local affiliates -- are evaluated currently under the “affordable housing,” “investment,” or “community services” tests, and thus would not benefit from the 50% weight given to lending.

OTS proposes letting the savings associations themselves decide how much weight to give to the CRA categories of affordable housing, community services for low- and moderate- income individuals, economic development, and revitalization or stabilization of low- or moderate- income geographies. The proposal would allow the savings associations to make this decision based on the “types of activities the communities they serve need,” (69 FR 68257, November 24, 2004, at 68264) not on any regulatory requirement. HFHI respectfully submits that it is the community itself, and not the local savings association, that could best determine what the community’s needs are. HFHI recommends that the rating test remain unchanged, as it is the best way to insure that the intent of the CRA will be effectively implemented.

Solicitation of General Comments on the Definition of “Community Development” in Section 563e.12(f)

At 69 FR 68259, the OTS solicits comments on all aspects of this definition, and in section 4 asks whether paragraph 1 of the current definition should be expanded to include affordable housing for individuals in rural areas who are not low- or moderate-income. As presently written, paragraph 1 states that community development includes “affordable housing (including multifamily rental housing) for low- or moderate- income individuals...” HFHI commends OTS for not proposing such a change in this NPR, and

strongly recommends that paragraph 1 of the current definition not be amended. There is a nationwide critical shortage of affordable housing for low- and moderate- income individuals in both rural and urban areas. HFHI believes that eliminating the requirement that CRA credit in rural areas be tied to low- and moderate- income levels would severely diminish the support of local savings and loan organizations for affordable housing in rural America.

Conclusion

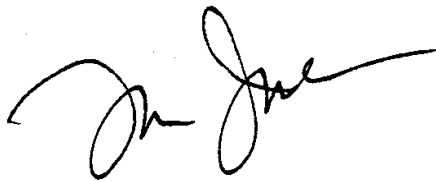
As a first priority, HFHI recommends that OTS conduct a study of the potential lost benefits to rural communities, including consultations with those communities, and that OTS publish the results in the Federal Register before OTS considers making such a major change to its regulations.

Secondly, if OTS does adopt a final rule, HFHI urges the OTS not to adopt the proposed change to the definition of the community development test that would allow CRA credit for activities that benefit individuals in rural areas who are not low- or moderate- income. If a final rule is adopted, HFHI urges OTS to continue to require that savings associations, in order to obtain CRA credit, conduct activities that: (1) provide community services to low- or moderate- income individuals in rural areas; (2) revitalize or stabilize low- or moderate-income housing in rural areas; or (3) promote affordable housing for low- or moderate- income individuals.

Thirdly, HFHI recommends that the weights in the current CRA rating test remain unchanged, rather than allowing the local savings associations to decide what the weights should be based on their perceptions of what the community's needs are.

Thank you for the opportunity to comment on this important regulatory matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Jones', with a stylized, cursive script.

Thomas L. Jones
Vice President

cc: Ted Swisher, Vice President, U.S. Area Office
Carole Kolstad, Director of Government Relations and Housing Policy