



**NATIONAL
COMMUNITY CAPITAL
ASSOCIATION**

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
Washington, DC 20552

RE: No. 2004-53

January 22, 2005

To Whom It May Concern:

National Community Capital appreciates the opportunity to comment on the Office of Thrift Supervision's (OTS) proposed rule regarding the Community Reinvestment Act (CRA). We strongly support an effective, well-enforced CRA that keeps pace with the changing financial services industry. Our comments reflect a commitment to a community development finance industry in which savings associations and CDFIs are important partners in expanding access to capital and credit.

On behalf of National Community Capital's 164 Member CDFIs, the thousands of businesses they finance, the tens of thousands of low- and moderate-income homeowners and renters they benefit, and the thousands of entrepreneurs they have financed, NCCA strongly opposes the changes set out in the proposed regulations. In particular, we oppose: 1. the change to revise the definition of "community development" to include community services to all individuals in rural areas regardless of income level; and 2. the change to the assignment of ratings for the current three-part CRA exam for savings associations with assets more than \$1 billion, allowing the thrift to pick, choose, or eliminate the weight given to investment and services in assessing its performance.

Over the last three decades, the Community Reinvestment Act has leveraged significant private investment into urban and rural communities, with a valuable three-pronged approach to lending, investing, and services. The OTS's proposal, if enacted, would have wide-reaching negative consequences, and could damage partnerships that are critical to reach low- and moderate-income people and communities across the country.

National Community Capital urges you to withdraw this proposal rather than to proceed.

Congressional Intent

Since its passage in 1977, and especially since the last significant revisions in 1995, the CRA has greatly increased the flow of capital to low-income people and communities. Because of the CRA, thrifts and other financial institutions often partner with community development financial institutions to enter new markets previously ignored or "redlined." The Community Reinvestment Act has fostered millions of new homeowners, thriving businesses, and accountholders. The

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changes proposed by the OTS would severely reduce the flow of capital accomplished by the CRA since 1977, and does not comply with Congressional intent of the law.

In a letter signed by 30 U.S. Senators to the four regulatory agencies regarding an earlier proposal (February 2004) to increase the definition of "small bank" from \$250 million to \$500 million, the Senators wrote, "This proposal dramatically weakens the effectiveness of CRA...We are concerned that the proposed regulation would eliminate the responsibility of many banks to invest in the communities they serve through programs such as the Low Income Housing Tax Credit or provide critically needed services such as low-cost bank accounts for low- and moderate-income consumers." This proposal goes even further in weakening the CRA.

Definition of "Community Development"

The OTS proposes to expand the definition of community development for rural areas, providing CRA credit for any activity, regardless of individual borrower income. This proposal is wholly inadequate, detrimental to the intent of the CRA, and does not provide sufficient protection for service to low-income rural communities. The proposal is also likely to divert services away from low- and moderate-income individuals in rural areas, populations that are among those having the greatest need for access to affordable credit and banking services.

The OTS has no way to justify this action. The proposal provides no economic, demographic, social, legal, or any other kind of analysis to support treating activities in rural areas, in and of themselves, as the equivalent of low- and moderate-income activities for the CRA.

In a letter regarding this proposal, more than 25 U.S. Representatives wrote, "A review of the legislative history of the CRA shows that there is no legal basis for treating all rural activities as the equivalent of activities directed toward low- and moderate-income persons and communities. Senator Proxmire made the only reference to 'rural,' and a passing one at that, at the time he introduced the CRA in the Senate. In discussing the need for the CRA, he pointed out that one of the assumptions underlying the CRA is that 'private financial institutions are the main source of capital for domestic economic development, housing, and community revitalization, both in urban and rural areas.' (*Cong. Rec. S1958, 1-24-77*) He made no distinction between the two areas."

Because this change would apply to all institutions regulated by the OTS, the impact of the change would be significant and affect low-income people in urban communities as well as rural areas. OTS-regulated institutions with assets greater than \$1 billion would be exempt from any requirement to serve the needs of low and moderate-income individuals as long as they provided some activities that benefit individuals in rural areas. Institutions that conduct business in both rural and urban areas could decide, for example, not to meet the needs of low- and moderate-income individuals in their urban areas by simply financing housing developments for the affluent in rural communities.

Congress enacted CRA in order to stop redlining and disinvestment in low- and moderate-income communities. Under this proposal, savings associations will suffer NO CRA penalty if they provide community development financing to only prosperous rural communities. The best way for the OTS to ensure that savings associations respond to the needs of rural markets is to subject them to full CRA examinations that require a range of services to and investments in these communities.

Weakened CRA Examination

Under current regulations, large thrifts with assets of more than \$1 billion have performance evaluations that review lending, investing, AND services to low- and moderate-income communities. The OTS's proposal provides 50 percent weight to lending and the remaining 50 percent would weigh lending, investments, or services, or some combination thereof, based on the savings association's election. Instead of demonstrating a full range of services to their communities, thrifts would be able to select their own examination criteria, without regard for the demand in their markets. Allowing savings associations to pick the services convenient for them, regardless of community need, is unacceptable.

While only 11.6% of the savings and loans across the country now qualify for the three-part CRA exam, they own \$1.1 trillion in assets or 87.4% of all thrift assets. States that will be hit the hardest by this proposal include Delaware, Hawaii, California, Utah, Oklahoma, Virginia, Texas, Nebraska, and Washington.

Lending, services, and investment have ALL contributed to the CRA's success. Banks and thrifts have increasingly recognized that CRA-motivated lending is profitable to them as well as beneficial to low-income communities. Investments channel capital and products through organizations with expertise in serving emerging low- and moderate-income markets. The current "service test" encourages banks and thrifts to become more active in the essential retail banking services needs of low- and moderate-income consumers. Low-cost bank accounts and individual development accounts, for example, have been important tools to help low-income people build assets.

One way banks and thrifts have been able to meet the investment test is through investments in CDFIs. These investments represent an important way to increase capital flow to low-income communities. The successful partnerships between CDFIs and banks, including those that result in Bank Enterprise Award (BEA) program awards¹, illustrate that investment opportunities are available and can be part of a thrift's strategy for community reinvestment.

Under the OTS's proposal, large thrifts would see no penalty for neglecting pressing community needs. For example, if a savings association eliminates its investment test, there will be no requirement for the thrift to finance affordable rental housing via the Low Income Housing Tax Credit or finance small businesses via equity investment. Allowing savings associations to create their own CRA exams will increase the amount of abusive payday loans, check-cashing schemes, and other high-cost services in low- and moderate-income communities since thrifts can eliminate basic banking services after implementing their own self-created CRA exams.

Missed Opportunities to Enhance CRA and Community Reinvestment

The 1999 Gramm-Leach-Bliley Act "modernized" the financial services industry without commensurate reform to community reinvestment requirements. In order for CRA to keep pace with the financial services industry, three important reforms are necessary:

¹ The Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) administers the Bank Enterprise Award Program (BEA), which provides incentives to insured depositories to increase their investment in underserved communities; a primary way that award recipients accomplish these goals is through investments in CDFIs.

1. Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy.

After passage of the Gramm-Leach-Bliley Act, savings associations became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates offer mutual funds with checking accounts.

In the paper, "The Parallel Banking System and Community Reinvestment," National Community Capital uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety net against some nonbank insolvencies.

CRA covers only banks and thrifts and, therefore, only a fraction of a financial institution's lending. To keep CRA in step with financial reform, all financial services companies that receive direct or indirect taxpayer support or subsidy should comply with the comprehensive three-part examination.

National Community Capital strongly urges the OTS to mandate that all lending and banking activities of non-depository affiliates be included in CRA exams, including *all* banks and thrifts that are part of large holding companies. This change would accurately assess the CRA performance of these groups that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers.

2. A savings association's assessment area should be determined by how it defines its market.

Under CRA, thrifts are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In this day and age, banks and thrifts market investments, sell insurance, issue securities, and are rapidly expanding into more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines of assessment areas.

Presently, CRA exams scrutinize a thrift's performance in geographical areas where it has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate. Moreover, it disregards the spirit of the CRA statute, which sought to expand access to credit by ensuring that thrifts lent to their entire markets.

National Community Capital recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia savings association makes loans to customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

3. CRA should provide meaningful predatory lending protection.

The explosion of the largely unregulated subprime market has contributed to an increase in abusive lending practices that threaten to undo many of the community reinvestment gains of the last decade, and changed the face of the financial services industry. The OTS's proposal completely ignores this critical issue. Predatory lending strips billions of dollars from consumers and

communities in the United States. Borrowers lose an estimated \$9.1 billion annually due to predatory mortgages; \$3.4 billion from payday loans; and \$3.5 billion in other lending abuses, such as overdraft loans, check cashing schemes, and tax refund loans. In order to meet fully the intent of CRA, regulators must see that thrifts not only invest in communities, but also take meaningful steps to preserve the wealth created by those investments.

A rigorous predatory lending standard would protect new homeowners created by the Administration's initiatives to increase minority and low-income homeowners, as these populations are among those most vulnerable to predatory lending. The OTS should develop a comprehensive, enforceable provision to consider abusive practices and assess CRA compliance accordingly. Without such a provision, many of the gains of CRA could be lost. National Community Capital urges the OTS to develop a meaningful plan to stop predatory lending.

Conclusion

The Community Reinvestment Act has fostered millions of new homeowners, thriving businesses, and account holders. The OTS's proposal threatens to roll back these gains in providing access to capital to low- and moderate-income people and communities. It is critical that the OTS not enact this proposal. To keep the CRA strong and meaningful, the OTS should:

- Withdraw its proposal changing the definition of "community development," to include services and activities to all individuals in rural areas regardless of income level;
- Maintain a full, three-part CRA exam for savings associations, rather than allowing them to choose only one of three activities;
- Take steps to expand CRA so that it better reflects changes in the financial services industry brought about by market shifts, technology advances, lending abuses, and financial modernization legislation.

The CRA encourages federally insured financial institutions to meet the credit and banking needs of the communities they serve, especially low- and moderate-income communities. This proposal undermines the intent of CRA, and threatens to undo the years of effort to bring unbanked consumers into the financial mainstream. Without a comprehensive standard to preserve the wealth created by community development finance, the CRA becomes nearly meaningless. National Community Capital urges you to remove immediately this dangerous proposal from consideration.

Thank you for the opportunity to comment. If you would like additional information or have questions about this letter, please do not hesitate to contact me at 215.320.4304 or markp@communitycapital.org.

Sincerely,



Mark Pinsky
President & CEO