® ACORN

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th St. NW 20429

RE: RIN 3064-AC50

Dear Mr. Feldman:

On behalf of the member families of Kentucky ACORN, the Association of Community Organizations for Reform Now, I urge you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. The proposed changes will reduce access to capital in hard-pressed low- and moderate-income neighborhoods, which will be devastating to the families we represent.

ACORN believes that since the passage of the CRA in 1977, great progress has been made in ending redlining and pushing banks to improve their lending performance in underserved communities. We have worked with banks to improve their outreach efforts, remove barriers in underwriting criteria that excluded credit-worthy low- and moderate-income applicants, and create loan counseling programs that assist first-time homebuyers.

There is still a long way to go, however, and the proposed changes to the CRA do not help us get there. Furthermore, the proposed changes will thwart the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. At a time when stronger curbs against predatory lending and other unscrupulous practices are needed, this proposal weakens the already inadequate regulations of banks. We cannot understand how an administration hopes to promote community revitalization and wealth building when its regulatory appointees propose to dramatically diminish banks' obligation to reinvest in their communities.

Under the current CRA regulations, banks with assets of at least $250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for state-charted banks with assets between $250 million and $1 billion. Instead of the investment and service parts of the CRA exam, community development criterion would require banks to offer community development loans, investments or services.

Association of Community Organizations for Reform Now

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The community development criterion would be seriously deficient as a replacement for the investment and service tests. Firstly, the investment and service tests counts for 50 percent of a bank's rating while the community development criterion will count considerably less to a bank's rating. This means that banks will have less of an incentive to offer investments and services in low- and moderate-income communities.

Secondly, mid-size banks with assets between $250 million and $1 billion would only have to engage in one of the three activities: community development lending, investing or services. Currently, mid-size banks must engage in all three activities. Under your proposal, a mid-size bank can now choose a community development activity that is easiest for the bank instead of providing comprehensive community development activities needed by low- and moderate-income communities. As a result, the proposed community development criterion will result in significantly fewer loans and investments in affordable rental housing, Low-Income Housing Tax Credits, community service facilities such as health clinics, and economic development projects.

Your proposal would make 879 state-chartered banks with over $392 billion in assets eligible for the streamlined and cursory exam. In total, 95.7 percent or more than 5,000 of the state-charted banks your agency regulates have less than $1 billion in assets. These 5,000 banks have combined assets of more than $754 billion. The combined assets of these banks rival that of the largest banks in the United States, including Bank of America and JP Morgan Chase. Your proposal will drastically reduce, by hundreds of billions of dollars, the bank assets available for community development lending, investing, and services.

As indicated in ACORN's recent study "The Great Divide 2004" there continues to be great disparities in home purchase lending for minorities as well as for low and moderate income communities. Nationally, the disparity between minority and white denial rates fell from 1993 to 1998 but by 2003 had returned to the 1993 levels. In Louisville, African-Americans are 1.9 times more likely to be denied than whites, an increase from 1998 when they were only 1.2 times more likely to be denied. Low and moderate income communities continue to be underserved by conventional lenders as well. 36.5% of Louisville's neighborhoods are considered low or moderate income although less than 14.2% of the conventional home purchase loans originated were made in those communities.

The elimination of the service test will also have harmful consequences for low- and moderate-income communities. CRA examiners will no longer expect mid-size banks to maintain and/or build bank branches in low- and moderate-income communities. Mid-size banks will no longer make sustained efforts to provide affordable banking services, and checking and savings accounts to consumers with modest incomes. Mid-size banks will also not respond to the needs for the growing demand for services needed by immigrants such as low cost remittances overseas. Banks eligible for the FDIC proposal with assets between $250 million and $1 billion have 7,860 branches. All banks regulated by the FDIC with assets under $1 billion have 18,811 branches. Your proposal leaves banks with thousands of branches "off the hook" for placing any branches in low- and moderate-income communities. The current service test, while not as strong as it should be, helps push banks to provide vital banking services to underserved neighborhoods, helping give alternatives to the check cashers and payday lenders who take advantage of our communities.

Lastly, to make matters worse, you propose that community development activities in rural areas can benefit any group of individuals instead of only low- and moderate-income individuals. Since banks will be able to focus on affluent residents of rural areas**,** your proposal threatens to divert community development activities away from the low- and moderate-income communities and consumers that CRA targets.

As one of the leading organizations fighting predatory lending nationwide, we are concerned that these changes would not only do nothing to help solve this crisis, but would in fact make this problem worse. No institution that makes or purchases predatory loans should be given a satisfactory or better rating on a CRA exam. Nor should institutions be given credit for giving high cost subprime loans when borrowers' credit warrants prime loans. Yet the proposed changes do not incorporate these important improvements. Instead, they allow thousands of more banks to escape their responsibility to provide good loans in our communities. In too many instances, this void will be filled by predatory lenders.

As an example of the involvement of banks in predatory lending, and the weakness of the CRA in stopping these scams, let us look at the case of the University National Bank of Minnesota, which with $83 million in assets, falls under the streamlined small bank test that the FDIC proposes to expand.

In the spring of 2003, Minnesota ACORN began working on issue we termed "foreclosure rescue scams." In researching this issue, we found that many of the transactions related to these scams involved small local banks in Minnesota.

These scams involve unscrupulous con artists who target homeowners facing foreclosure and promise to save their home. Instead, the con artists gain ownership of the home for themselves for much less than its actual value and then evict the family and sell the home for its real value, stealing their equity and leaving them homeless.

There are several different types of foreclosure rescue scams, but the kind we have seen most often involves a homeowner with significant equity who is behind on their mortgage, and a notice of sheriff's sale has been published. An agent contacts the homeowner with a proposal to have an "investor" buy their house and rent it back to them with an option to buy, similar to a contract-for-deed. The agent uses any kind of misleading or deceptive tactics necessary to convince the homeowner that this is the best solution. The investor purchases the house for a price that is basically the amount owed to the foreclosing company, which is typically much less than the actual value of the house. The investor is now the legal owner of the property.

There are then two possible outcomes, neither of which is good for the former homeowner. One is that the investor requires that the former homeowner pay a monthly rent that is obviously unaffordable, and when the homeowner falls behind on the rent, the investor gets the former homeowner evicted. In the other possibility, if the homeowner somehow succeeds in being able to buy their house back, it is at a price tens of thousands of dollars more than what they had owed on their mortgage.

The following is a real-life example of how these scams work.

> Ruth Senear is an 82 year old widow who has owned her home in North Minneapolis since the 1950's. When she fell behind on her $41,000 mortgage and was facing foreclosure, she was contacted by a company called Rand Financial who said it could help her keep the house. Ms. Senear didn't realize what was happening, but Rand Financial purchased the house from her for about $50,000, although it is worth $125,000. Rand rented the house back to her for $800 a month, knowing that she would not be able to afford the payments on her $818 a month income from social security and a pension. When Ms. Senear was unable to make the payment, Rand Financial took action to have her evicted and on April 25 a sheriff delivered a notice ordering Ms. Senear to vacate the premises.

We first encountered this problem in the summer of 2002 when we were contacted by a St. Paul homeowner who had a heart attack, followed a month later by a stroke. She missed work and couldn't keep up with the $607 a month mortgage payment and was facing foreclosure. She was approached by Daniel Butterfield with Equistar Real Estate who promised to help her and arranged for Hendrie Grant and Grant Holding to purchase her home and sell it back to her. Under this arrangement, she had to pay more than $1,000 a month, which she could not afford because she was still on disability. When she came to us, she was about to be kicked out of her house just two months after Grant had bought it. University National Bank provided the financing for Grant to purchase her home.

Shortly after meeting with the above homeowner, we were contacted by another homeowner who had similarly been taken by Butterfield and Equistar. University National Bank also provided the financing for this transaction.

We figured that University National Bank must not be aware of how their financing was being used and sent David Reiling, the bank's president, a copy of the enclosed complaints which we had filed with the Commerce Department. Mr. Reiling thanked us for bringing this to his attention, and we figured that would be the end of University National Bank's involvement in these scams. (We had also sent a copy of these complaints to Precision Closers which Butterfield used and within minutes of receiving our fax, they called to say they would no longer participate in any more of Butterfield's transactions and in fact would cancel one that had already been scheduled.)

After we began to see more families who had been victimized by these scams, we recognized that this was a serious problem that was on the rise and that, coupled with the increase in foreclosures, could reach epidemic proportions. This led Minnesota ACORN and ACORN Housing to step up our efforts last spring to tackle the problem.

With ACORN's assistance, the Minnesota Attorney General's office filed several lawsuits against Grant and won an injunction preventing him from conducting ANY further real estate transactions. Grant and Equistar also had their real estate and mortgage licenses revoked by the Minnesota Commerce Department.

As we began to research the issue and delve into the cases of individual homeowners, we were shocked to find out the number of loans made by University National Bank and other local banks to fund the three companies/individuals whom we identified to be the major perpetrators of these scams.

University National Banks has made a total of 74 mortgages for over $7 million to the above entities, with more than 50 of the mortgages going to Grant. We identified 8 other local banks that together with University National Bank made a total of 149 mortgages to these companies, totaling almost $16 million.

We were struck not only by the sheer volume of loans that University National Bank made to the above people and companies, but also by the dates when the loans were made. University National Bank continued to provide them financing well into 2003 – almost a year after we had first brought this to David Reiling's attention!

University National Bank continued its involvement in these scams well after learning of their existence. After we brought these scams to Reiling's attention, University Bank made:

- At least 6 more mortgages to Grant;
- At least 3 to Butterfield; and
- At least 5 to a company called MEW properties for deals that were arranged by Daniel Butterfield and Equistar.

In August 2003 and through the Fall, we had a series of meetings and discussions with University Bank regarding the scams and the bank's involvement. Despite these meetings and after the Attorney General's office had announced their suit and Hendrie Grant's activities were exposed in the press, University Bank made mortgages to a company called McGovern-Sadusky to purchase homes from Hendrie Grant – homes which Grant had swindled from their rightful owners. Had University Bank not made these loans to McGovern to buy these properties, the homes would be covered under the Attorney General's injunction, which was won shortly after the sales, and the homes would be protected from being sold.

We were especially surprised about University National Bank's involvement given their reputation as a socially responsible, community-oriented bank. University Bank has represented its lending as an effort to help revitalize low-income neighborhoods. However, a significant number of their loans had the exact opposite effect, enabling investors to deceive low-income homeowners and profit from their misfortune.

University Bank's loans are not made directly to homebuyers but are made to investors to purchase properties. According to its HMDA data, University National Bank made 336 mortgages in 2002.

- 323 of the loans, 96% of the total, were purchases
- 330 of the loans, 98% of the total, were to non-occupants.

The HMDA data also shows that the majority of University Bank's loans were made to income investors to buy homes in lower income neighborhoods. 309 of the bank's mortgages, 92%, were made to borrowers with incomes above 120% of the median income, yet:

- 92 of the bank's mortgages, 28%, were made in low-income census tracts
- 141 of the bank's mortgages, 43%, were made in moderate-income census tracts

Given University National Bank's extensive involvement in these scams, it is unclear exactly how many of their mortgages were made to perpetrators of these scams, but we believe it to be a significant number.

If this is how a self-described "socially responsible" bank behaves, you can imagine the problems we face with the rest of the industry. It also shows the weakness of the small institution test, which allows these practices to continue.

Holding mid-sized banks accountable for serving local communities is particularly important now, as mergers and consolidation create a set of giant national banks, less accountable to local needs and less susceptible to local pressure. This only increases the importance of mid-sized banks, and means it is particularly important to continue to subject them to the large institution test. Too many lenders we have talked to in the small bank category think of this test as a virtual exemption from the CRA, and the mid-sized category being considered would be nearly as weak. For these reasons, the threshold for the large institution test should be left where it is.

We believe that your proposal contradicts CRA's statutory mandate of imposing a continuing and affirmative obligation to meet community needs. Your proposal will dramatically reduce community development lending, investing, and services. You compound the damage of your proposal in rural areas. Two other regulatory agencies, the Federal Reserve Board and the Office of the Comptroller of the Currency, did not embark upon the path you are taking because they recognized the harm it would cause. The FDIC has adopted a "go it alone" approach that is unprecedented in banking regulatory history and that will seriously undermine fair lending enforcement.

The proposed changes to CRA will decrease access to credit and capital at our time when our communities remain mired in recession and economic hardship. The proposed changes will intensify the damage a weak economy has inflicted on the communities we represent. The proposed changes to CRA must be withdrawn.

Sincerely,

Kentucky ACORN Board