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Sent: Monday, May 09, 2005 2:26 PM
To: Comments
Subject: RIN 3064-AC89

Federal Deposit Insurance Corporation
E-mail: Comments@FDIC.gov
Robert E. Feldman
Executive Secretary
Attention: Comments
550 17th St. NW 20429
RE: RIN 3064-AC89

May 9, 2005

To whom it may concern:

National Community Capital Association (NCCA) appreciates the opportunity to comment on the proposed rule regarding the Community Reinvestment Act (CRA). Our comments reflect a commitment to a community development finance industry in which banks and community development financial institutions (CDFIs) are important partners in expanding access to capital and credit.

NCCA is a network of 170 private-sector CDFIs. The network invests in individuals, small businesses, quality affordable housing, and vital community services that benefit economically disadvantaged people and communities across the United States. National Community Capital's core lines of business are financing for CDFIs, training and consulting for CDFIs and CDFI investors, advocacy on behalf of the industry, and information products for CDFIs.

We believe that the 1995 changes to the Community Reinvestment Act, emphasizing performance over process, took a major step forward in extending capital and credit to low-income and underserved communities. These changes catalyzed productive partnerships between banks of all sizes and CDFIs in their communities. Eliminating the investment test would significantly undermine these partnerships.

The current proposal represents a considerable improvement over proposals the agencies issued in 2004, and demonstrates a significant commitment to low- and moderate-income people and underserved areas. We continue to see shortcomings in the proposal, however. In particular, we oppose the elimination of the three-part test with an explicit focus on investments. We also favor a rural strategy that focuses, to the extent practicable, on low- and moderate-income people; as well as collection and disclosure of data on small business and farm lending.

On behalf of NCCA's 170 Member CDFIs, the thousands of businesses they finance, tens of thousands of homeowners and renters they benefit, and the more than 40,000 investors they have attracted, we urge you to:

- Maintain the three-part test for a maximum number of banks;
- Include investments in intermediaries and support for national strategies as part of the definition of community development;
- Incorporate the CDFI Fund's investment areas as one part of a strategy to serve rural areas, and recognize that rural poverty is not easily quantified in geographic terms;
- Require collection and disclosure of data on small business and farm lending; and
- Expand CRA to keep pace with a changed financial service industry.

The CRA is stronger when it is evaluated and reported consistently among financial institutions. We are very distressed that the Office of Thrift Supervision (OTS) has not acted in coordination with the other three agencies, instead offering its own proposal. We ask that you urge your colleagues at OTS to adopt the regulations issued by the OCC, Fed, and FDIC, with the changes we detail in this letter.

Importance of the Three-Part CRA Exam

The most significant shift in the current proposal creates a new category of "intermediate small banks" having between $250 million and $1 billion in assets, and eliminates the three-part (lending, investment, and services) test for these banks. Instead, "intermediate small banks" would be subject to a two-part test with only lending and community development components. National Community Capital objects to this change and encourages maintenance of a three-part exam with an explicit focus on investment and service.

As we indicated in our comment letter of March 30, 2004, changing the definition of "small bank" and conducting full CRA exams on significantly fewer banks would likely result in a substantial decrease in investment in underserved communities. At that time, the FDIC and other regulatory agencies proposed lifting the threshold to only $500 million. Exempting even more banks from full CRA examination by raising the asset size to $1 billion would exacerbate the effects that drew our concern last year. Changing the definition of "small bank" from $250 million to $1 billion would remove more than 1,500 banks with more than $679 billion in assets from the scrutiny of full CRA exams. In addition, the change that designates a bank ""intermediate" or "small" without regard to whether it is part of a large holding company further reduces the financial services assets subject to CRA provisions, bringing the CRA even more out of step with the "modernized" financial services industry.

Bank investments in CDFIs 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 awards[1], illustrate that investment opportunities are available and can be part of a bank's strategy for community reinvestment, regardless of the institution's size. In the most recent BEA round, fully 70% of the awardees had assets of less than $1 billion. Since 1999, 19% of all BEA awardees have been institutions with assets between $500 million and $1 billion. The partnerships exemplified in these awards indicate that investment opportunities are available for banks of all sizes and in markets across the country.

Lending, services, and investment have all contributed to the nearly three decades of the CRA's success. The current "service test" encourages banks 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; banks would have far less incentive to provide these tools under the current proposal. The test is particularly important in rural areas, where consumers have fewer choices in financial services generally, and where less emphasis on service could further reduce their options.

Elimination of the three-part examination would undermine decades of benefit that underserved communities have reaped, not only from the growth in CRA-motivated capital but also from the partnerships between banks and CDFIs. Both banks and CDFIs have realized that working in partnership can enhance both institutions' effectiveness in reaching underserved markets. The Community Reinvestment Act has played a key role in this effective collaboration, fostering millions of new homeowners, thriving businesses, and accountholders.

Definition of Community Development

To ensure that "community development" lending meets the needs of low- and moderate-income people, and conform to the intent of the CRA, the regulators should focus on rewarding innovative strategies for community development. Community development lending should:

- Explicitly include and give weight to investments in intermediaries such as CDFIs. Bank-CDFI partnerships have been extraordinarily beneficial, as we outline above. Any definition of community development should reward these collaborations. By the same token, regulators should not treat investments in CDFIs or other intermediaries as "easy" or "not innovative."

- Support national as well as local strategies. Many intermediaries finance customers and projects across the country, and banks making investments in national intermediaries ought to be able to claim CRA credit. Investments in national intermediaries must not, however, substitute for a bank's service to its immediate market.

- Include only those activities and loans that have a primary purpose of community development.

Measuring Community Reinvestment in Rural Areas

The agencies, and banks and thrifts, face particular challenges in ensuring that lending, investment, and services in rural areas meet the intent of CRA. Many CDFIs working in rural areas target their products and services by income and not geography, because the rural poor are dispersed; poverty is not concentrated as in urban areas. Any strategy to assess service to rural areas should focus on serving low- and moderate-income people, wherever they happen to live.

National Community Capital believes that Investment Areas defined by the CDFI Fund incorporate the criteria of population loss and outmigration that are key indicators of distress in rural communities, particularly in the Upper Midwest region of the United States. We support inclusion of Investment Areas as regions eligible for CRA credit.

It may be possible to combine the best features of the CDFI Fund's Investment Areas with the 90 percent of area median income or 80 percent of statewide median income approach that the regulators outline in the proposal's preamble. The CDFI approach concentrates development in particularly distressed counties while the 80 or 90 percent of median income definition ensures LMI census tracts in more regions of the country. The final result should be a proportion of rural census tracts as LMI that is comparable to proportion of urban LMI tracts, reasonable distribution across the country, and ensuring that counties with extreme distress are targeted. The regulators should also give priority to unincorporated areas and nonmetro communities with populations of less than 10,000.

Because these changes would reflect a new way of considering CRA-eligible activities in rural areas, we encourage the agencies to revisit this issue three years from the enactment of new regulations, issuing a new proposed rule with request for comment and adjusting the definitions accordingly.

Data Collection and Disclosure

We are disappointed that the proposal reverses the requirements for increased data disclosure the agencies proposed last year. The proposals for increasing information on both small business lending data and high-cost loans would have provided banks and communities with important knowledge about financial institutions track record in serving community credit needs. Mid-size banks are vital in many communities, particularly in medium-sized cities and rural communities. Publicly available data is a key tool to hold these banks accountable for providing credit to small firms and for affordable housing and community development. The Woodstock Institute, in publications like "Small Business Lending in the Chicago Region, 2001," assesses the reach and distribution of small business lending. Banks and community groups in the area can use that research, based on CRA data, to identify and pursue market opportunities.

The Home Mortgage Disclosure Act has contributed significantly to reducing discrimination in housing finance. Similar disclosure for small business lending could help ensure fair and equal access to credit by the low-income and minority entrepreneurs that drive job creation in emerging markets.

Missed Opportunities to Enhance CRA and Community Reinvestment

The agencies continue to miss opportunities to enhance CRA and protect the progress it has made. 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. 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, banks 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 of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans—especially in the subprime markets. The change in "small banks" in the proposed rule, which does not differentiate between stand-alone banks and banks that are part of large holding companies, exacerbates this trend.

However, CRA covers only banks, 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 three-part examination.

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. In October 1998, the Federal Reserve Board drove this point home convincingly when it intervened to structure a massive bailout of Long Term Capital Management by several taxpayer-subsidized banks. In the years since, however, no regulation has

National Community Capital strongly urges regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams, including all banks that are part of large holding companies. This change would accurately assess the CRA

performance of banks 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 bank's assessment area should be determined by how a bank defines its market.

Under CRA, banks are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2005, banks no longer just accept deposits, they market investments, sell insurance, issue securities, and are rapidly expanding the more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas are typically defined.

Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank 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 banks 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 bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

2. CRA should provide meaningful predatory lending protection.

We applaud the regulators for taking the modest but important step of moving from guidance to regulation the concept that a bank's rating is adversely affected if it engages in discriminatory and illegal credit practices. This shift indicates that the agencies are thinking proactively about curbing predatory lending, but they can and should go farther than this change.

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 February 2004 proposal included a predatory lending standard that National Community Capital noted was a step in the right direction but criticized as inadequate, and this proposal includes the same modest step forward. 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, excessive credit card debt, and tax refund loans. In order to fully meet the intent of CRA, regulators must see that banks 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 agencies' rule should contain 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 agencies to develop a meaningful plan to stop predatory lending.

Conclusion

NCCA appreciates the difficult task the agencies face in balancing community needs with reasonable regulatory burden. It is critical that the regulators continue to focus on low- and moderate-income people—this has made CRA a successful strategy for channeling private capital to underserved people and communities. You can best accomplish this task by maintaining the three-part examination focusing explicitly on lending, investment and services; by rewarding innovative strategies for community development; by adopting a rural strategy that directs investment to low- and moderate-income people; by making available detailed data on small business and farm lending; and by expanding CRA to keep pace with the financial services industry. All four regulators should act in concert to adopt these policies.

Thank you for the opportunity to comment. If you would like additional information or clarification, please feel free to contact me at 215.320.4304 or markp@communitycapital.org.

Sincerely,

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[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.