OCC – Docket Number 05-04

Comments to Proposal to Revise CRA Regulations

Sirs:

We have reviewed the proposal regarding changes to the regulations implementing the Community Reinvestment Act (CRA) to be issued by the FRB, OCC and FDIC. We believe that while well-intended as a regulatory relief measure, the proposed changes may in fact provide little, if any, regulatory relief to banks between $250 million and $1 billion ("small banks"), and may in fact increase the regulatory burden on these institutions. As further explained herein, the proposal does remove certain testing criteria for small banks, but introduces a completely new and unnecessary test.

Small Banks

We applaud the banking agencies for proposing to increase the size of "small banks" to $1 billion and to include some factor for future growth. However, the proposal still differentiates among community banks; we believe consistent treatment of all community banks would be more beneficial to both banks and their regulating agencies. We point to the fact that when the current CRA rule was adopted in 1995, banks with assets under $250 million (designated as "small banks" subject to streamlined tests for CRA purposes) held 14% of all banking assets. Today, all banks under $1 billion hold that same 14% of the banking industries assets; in today's market, banks under $1 billion are small banks.

Within our own group of four affiliated community banks, we will have at least two completely different CRA tests under the new proposal. Further, some banks may have a third examination criteria to address: underserved rural and disaster areas. This will mean different policies, data collection systems and exam procedures, all resulting in an increase in our regulatory burden. Our institutions are all community banks, managed and operated in similar fashion with shared resources, including compliance personnel and policies. However, the new proposal draws distinctions among these community banks which will result in different compliance regimes and corresponding inefficiencies within a banking organization simply due to differences in size. Further, the proposal will now require the bank regulatory agencies to train its staff and examiners to enforce three different CRA standards.

These inefficiencies could be eliminated if the proposal were changed by simply increasing the small bank definition to $1 billion and eliminating the new two-prong test. As an alternative, the banking agencies may consider adding the two-prong test to community banks deemed to be "complex" under the FRB's existing parameters. We would also suggest you consider exempting banks in communities of less than 10,000 if they are not part of a metropolitan statistical area. Finally, we must point out that credit unions are completely exempt from CRA, despite the fact that these institutions are more "bank-like" than ever and compete directly with banks which are subject to all of the requirements of CRA.

New Community Development Test

We believe the FRB, OCC and FDIC have added unnecessary complexity by introducing an entirely new and separate "second" test for community banks between $250 million and $1 billion. In the new proposal, the FRB, OCC and FDIC are establishing an additional caveat, community development (CD), which would require a financial institution to attain a 'satisfactory' designation in both lending and the CD test in order to achieve an overall 'satisfactory' rating. Again, the articulated goal of regulatory burden relief is undermined by this new and unneeded requirement which results in banks now having to pass, in effect, two CRA examinations. The CD test, which is completely unknown to both bankers and examiners, will undoubtedly add confusion, subjectivity and a new uncertainty to the examination process, creating confrontations between the examiners and the supervised institutions.

We ask that you strongly consider adopting the OTS' approach which retains the existing streamlined test for CRA for the small banks by simply increasing the asset size to less than $1 billion. If the FRB, OCC and FDIC adopt the proposal as currently drafted, banks will be placed at a competitive disadvantage relative to thrifts, making the OTS' charter an increasingly attractive alternative for banks. At a minimum, the proposed two-prong test should be adjusted so that an overall grade could be used rather than two separate component grades which each require a "satisfactory" rating.

Conclusion

In recent years, banks have consistently heard from the bank regulatory agencies that regulatory burden relief is among their most important goals. All involved understand that the burden is choking profitability within the industry, and harming small banks especially. From a historical perspective, banks under $1 billion today are the banks under $250 million from 1995. Adjusting the definition of a "small bank" to include institutions up to $1 billion is a proper and appropriate adjustment to keep regulatory "burden creep" in check. In that truest sense, any proposal which does anything more than change this definition is simply adding new regulatory burden to the banking industry and small banks in particular. Bankers today are acutely aware that as their customers have been presented in recent years with alternative financial services providers, the growth and survival of banks depends directly upon serving the needs of their respective communities. Noting this awareness and the fact that the current framework has worked since 1995, we believe that simply adjusting the definition of small banks is an appropriate change given the growth in relative size of banks, coupled with a removal of the exemption from CRA requirements for credit unions which places banks at an unfair and unjustified competitive disadvantage.

Respectfully submitted,
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