NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

July 28, 2009

Office of the Comptroller of the Currency
250 E. St. SW, Mail Stop 2-3
Washington DC 20219
Docket Number OCC-2009-0010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington DC 20551
Docket Number R-1360

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St. NW
Washington DC 20429
RIN number 3064-AD45

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street NW
Washington DC 20552
Attention: OTS-2009-0010

To Whom It May Concern:

The National Community Reinvestment Coalition (NCRC) believes that the agencies have appropriately proposed an addition to the CRA regulation in response to a statutory requirement to provide favorable CRA consideration for loans financing higher education. NCRC urges the agencies to retain their proposed targeting for low-cost loans for low-income students seeking higher education. NCRC, however, has significant concerns regarding the proposal to provide favorable consideration outside of assessment areas for banks' financing low-income credit unions, and minority- and women-owned financial institutions. Instead of providing more CRA consideration outside of assessment areas, NCRC urges the agencies to undertake meaningful reform of assessment area procedures. NCRC recommends that the agencies study the impact of the existing Question and Answer (Q&A) offering CRA consideration for bank financing of low-income credit unions and minority- and women-owned financial institutions to determine whether bank financing of this kind is effectively targeting these communities.

NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. As such, we offer the following detailed comments on each of these proposed changes to the CRA regulation:

Activities in Cooperation with Minority- or Women-Owned Financial Institutions and Low-Income Credit Unions

The agencies propose to add to the CRA regulation that banks will receive favorable CRA consideration for investments, loan participations, and other ventures undertaken with minority- and women-owned institutions and low-income credit unions. This proposed addition to the regulation codifies Q&A.12(g)-4, which states that examiners will favorably consider bank investments in minority- and women-owned financial institutions and low-income credit unions even if these institutions are located outside of the bank's assessment area.

NCRC believes that the agencies must ensure that banks are serving needs in their assessment areas. It would be counterproductive for a bank not to pursue investment opportunities in its assessment area, and instead pass its investment test or community development test through investments in a low-income credit union or a minority- or women-owned institution outside of its assessment area (including areas in different parts of the country where the institution does not make loans or have a business presence). If CRA is to encourage banks to engage in holistic community development, CRA must direct banks to finance community development in areas where banks make loans and offer bank services. Allowing favorable CRA consideration outside of assessment areas for investments in other lending institutions undermines the prospects of holistic community development that benefits from synergies between bank lending and investment activity.

NCRC encourages the agencies, at the very least, to modify their proposal to state that investments in these institutions will receive positive CRA consideration only if the bank or thrift has met needs in its assessment area first. NCRC's proposed modification would also attain more consistency with the interagency Q&A document, whereas your proposal would create unnecessary inconsistencies in how investments are treated (other Q&As such as §_.12(h)-6 and _.12(h)-7, which state that needs must first be met in a bank's assessment area before a bank can receive CRA points for activities outside of assessment areas).

NCRC reiterates the request that the agencies revise their definition of assessment areas to include geographical areas in which a bank has issued a significant number of loans, in addition to geographical areas that contain a bank's branches. The agencies could adopt a threshold for determining an assessment area; for example, an assessment area could be a county or metropolitan area in which a bank has made one-half of one percent of all loans. If the agencies established assessment areas in the manner NCRC suggests, the agencies would find that there would be less of a need to provide CRA points to activities outside of the assessment areas. The number of geographical areas constituting a bank's assessment areas would expand under NCRC's proposal, but would expand in a manner that sensibly directs an institution's support of low-income credit unions and minority- or women-owned financial institutions to areas in which the bank has a significant business presence.

Finally, NCRC requests that agencies conduct an analysis of the impacts of the new Q&A regarding low-income credit unions and minority- and women-owned financial institutions before codifying this Q&A in the CRA regulation. The agencies should evaluate what types of investments, loans, and services have been leveraged through low-income credit unions and minority- and women-owned financial institutions. Specifically, the agencies should determine whether these investments, loans, and services have benefited minority and/or low- and moderate-income borrowers and communities, and whether these loans, investments, and services have disproportionately benefited predominantly white middle- and upper-income communities. NCRC supports expanding CRA exams so that they include an analysis of bank lending, investing, and service to minorities and communities of color. As such, NCRC recommends that the agencies ascertain whether bank financing of low-income credit unions and women- and minority-owned financial institutions have also benefited minorities and communities of color.

Should research reveal that the beneficiaries of these investments, loans, and services have been disproportionately white middle- and upper-income communities, the proposed language should be edited to focus on minority and low- and moderate-income borrowers and communities. In addition to informing the final regulatory language, NCRC's recommended agency analysis can contribute to a best-practices publication of how bank financing has enabled low-income credit unions and minority- and women-owned financial institutions to offer loans, investments, and services to low- and moderate-income communities.

Low-Cost Education Loans Provided to Low-Income Borrowers

As required by the Higher Education Opportunity Act, the agencies are proposing to revise the CRA regulation to specify that low-cost loans provided to low-income borrowers in a bank's assessment area would receive favorable CRA consideration. NCRC believes that the agencies appropriately implemented the CRA provision in the Higher Education Opportunity Act. NCRC agrees with the proposal that private sector loans receiving CRA consideration should have interest rates and fees no greater than comparable loans offered though programs of the Department of Education. There has been recent controversy over the high-cost nature of some education loans. It is contrary to the mandate of CRA to meet credit needs in a safe and sound manner to provide CRA points to private sector loans that have high interest rates and/or abusive terms and conditions. Requiring that the loans be low-cost is also consistent with the purpose of the Higher Education Opportunity Act "to make college more affordable and accessible."

The agencies ask if the lowest or highest rate and fees available under the comparable Department of Education program should be used to determine a low-cost private sector loan. In order to maintain consistency with the purpose of the Higher Education Opportunity Act to make college affordable, the lowest rates and fees should be used. In addition, the regulatory agencies must not extend CRA points to private sector loans that contain loan terms and conditions including interest payment features that are less favorable than loans offered through programs of the Department of Education. Further, only-closed end, unsecured loans should be considered education loans. The current foreclosure crisis has exposed multiple abuses associated with home equity lending and second lien loans; therefore, it is appropriate not to encourage education loans that use a person's home, particularly a low-income family's home, as collateral.

In addition, NCRC believes that the agencies define low-income correctly in that the definition of low-income is consistent with the CRA definition of less than 50 percent of area median income. Further, loans that receive CRA consideration should only be for higher education. It is not appropriate to embroil CRA in the controversy over public versus private schools by offering CRA points for private-sector loans that finance elementary or secondary education. Finally, purchases of education loans should not receive favorable CRA consideration; only originations should receive favorable consideration. CRA exams already provide too much consideration for purchased loans particularly when purchasing loans does not significantly expand the capacity of financial institutions to offer additional loans.

NCRC appreciates the opportunity to offer our comments on this important matter. We urge the agencies to adopt our suggestions so that these proposed changes contribute to a CRA regulation that is robust and effective in stimulating lending, investing, and services in formerly redlined communities. If you have any questions about our comments, please call me or Josh Silver, Vice President of Research and Policy, at 202-628-8866.

Sincerely,

John Taylor
President and CEO
National Community Reinvestment Coalition