



MASSACHUSETTS COMMUNITY & BANKING COUNCIL

TO: Federal Deposit Insurance Corporation  
FROM: Massachusetts Community & Banking Council  
DATE: August 11, 2010  
RE: Community Reinvestment Act Regulation Hearings  
RIN 3064-AD60

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The Massachusetts Community & Banking Council is pleased to submit the following comments regarding modernization of the regulations that implement the Community Reinvestment Act (CRA).

### **Massachusetts Community & Banking Council**

The Massachusetts Community & Banking Council (MCBC) as established in 1990 to bring together community organizations and financial institutions to promote positive change in the availability of credit and financial services across Massachusetts. MCBC seeks to achieve this goal by encouraging community investment in low- and moderate-income and minority neighborhoods, promoting fair and equitable access to financial products and services and providing research, assistance and direction in understanding and addressing the credit and financial needs of low- and moderate-income individuals and neighborhoods.

MCBC operates through three committees – Banking Services, Economic Development and Mortgage Lending – each co-chaired by representatives of a financial institution and a community organization. Committee meetings are open to all those who wish to attend. The meetings offer an opportunity for sharing information on new initiatives, emerging issues and investment opportunities, and for networking and developing relationships. Today, nearly 200 representatives of financial institutions, community organizations, public agencies and others from cities and towns in the Boston metropolitan area participate in and/or receive regular information on MCBC committee activities. More detailed information on MCBC and its committees is available on MCBC’s website at [www.mcbc.info](http://www.mcbc.info).

### **2010 CRA Roundtable Discussions**

This year, in commemoration of its 20<sup>th</sup> anniversary, each of MCBC’s committees hosted a roundtable discussion on CRA to provide representatives of financial institutions, community organizations, public agencies and others an opportunity to share their views on how CRA is

working and whether and to what extent proposed regulatory and legislative changes to CRA can help to encourage more lending and more appropriate banking services to individuals, small businesses and community developers in low- and moderate-income communities. In total, over 110 individuals, representing banks, credit unions, community organizations, public officials, regulators, trade associations and community advocates, attended the roundtable discussions. The comments offered below reflect their input and areas of consensus.

## **Geographic Coverage**

*MCBC recommends that the definition of a bank's CRA Assessment Area should be revised to include all of the geographic areas in which the bank does a significant portion of its lending, not just the areas where it has branch locations.*

In each of MCBC's CRA roundtable discussions, it was noted that some banks that do significant lending in Massachusetts do not include the state in their CRA Assessment Area. Lending performance in Massachusetts is, therefore, not considered during the bank's CRA examination. Participants in MCBC's Mortgage Lending Committee CRA Roundtable Discussion noted that, for example, in 2008, the Wells Fargo "family" was the second largest lender in Massachusetts with a total of 5,614 loans (2,921 home purchase loans and 2,693 refinance loans). Of these, 393 (7.0%) loans were high-APR loans, ranking Wells Fargo the second largest provider of high-APR loans in the state.<sup>1</sup> In that year, three Wells Fargo affiliates provided mortgage lending in Massachusetts. Of these, the vast majority of mortgage loans (5,333) were provided by Wells Fargo Bank, N.A., an out-of-state bank that can do mortgage lending in Massachusetts without a license and is, therefore, exempt from state regulation.<sup>2</sup> While these lending numbers undoubtedly represent a small percentage of Wells Fargo's total mortgage lending activity, they can and do have a significant impact on Massachusetts' borrowers and neighborhoods and they should be included in the bank's CRA examination.

The definition of a "significant" portion of lending should similarly reflect local impact by specifying a certain minimum number of loans in a political subdivision or defined geographic area, rather than a percentage of total lending. In Massachusetts, for example, mortgage lenders that make 50 or more loans are subject to state regulation and oversight.

## **Affiliate Activities**

*MCBC recommends that the lending performance of all company affiliates doing business in a geographic area should be included in a bank's CRA examination.*

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<sup>1</sup> See Table 24, *Changing Patterns XVI: Mortgage Lending to Traditionally Underserved Borrowers and Neighborhoods in Boston, Greater Boston and Massachusetts 2008*, Massachusetts Community & Banking Council. Available at [www.mcbc.info/reports/mortgage](http://www.mcbc.info/reports/mortgage).

<sup>2</sup> See Table 28, *Changing Patterns XVI*.

Currently, the regulatory agencies consider affiliate activities only at the request of the related depository institution. Participants in MCBC's CRA Roundtable Discussions agreed that local impact, not corporate organization, should be the criteria for CRA evaluation and that such review should be mandatory for all affiliates. Participants in MCBC's Mortgage Lending CRA Roundtable Discussion noted that, among the 30 largest lenders in Massachusetts in 2008, nine have two or more affiliated lenders in the same "lender family" doing business in the state. Of the 25 affiliates reported in MCBC's 2008 report, only seven (with Massachusetts branch locations) are covered by CRA and another seven are licensed mortgage companies covered by state regulations.<sup>3</sup>

### **Small Business and Consumer Lending Evaluations and Data**

Discussion at MCBC's Economic Development Committee CRA Roundtable Discussion suggested that mortgage lending appears to receive more attention in CRA examinations than small business lending. Participants agreed that:

*Increasing the weighting of and/or attention to small business lending in the CRA examination process may provide an incentive for banks to make a greater effort to serve small business owners in low- and moderate-income neighborhoods.*

Roundtable participants also recommended:

- CDFIs, micro-loan funds and other non-traditional lenders play an important role in providing gap financing to small businesses that cannot meet typical bank safety and soundness standards.

*CRA Investment Test credit for bank investments in these lenders can help to ensure that gap financing will be available. Smaller banks that are rated solely on their Lending Test performance should receive CRA consideration for their financial involvement in non-traditional local lenders.*

- Small dollar loans, publicly-supported loans and loans involving non-traditional lenders (e.g. CDCs, CDFIs) are an important source of financing for many small business owners and require broad-based bank participation.

*These loans require more staff time and are generally less profitable. Increasing the CRA value of such loans, especially lower-cost, small dollar loans may serve as an incentive for expanded bank activity in this area.*

- Many small business owners need help in stabilizing their personal as well as their business finances.

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<sup>3</sup> See Table 28, *Changing Patterns XVI*.

*Increasing access to financial education and credit repair programs can help to supplement the work of technical assistance providers. Smaller banks that are rated solely on the basis of their Lending Test performance should receive CRA consideration for their support of and involvement in local financial education programs that serve small business owners.*

- Current CRA loan reporting does not provide enough information to adequately describe or evaluate a bank's record in serving the needs of local small businesses.

*CRA reporting does not distinguish between a credit card, a small dollar loan, a line of credit or a complicated small business loan. A loan term variable could make this distinction.*

*CRA reporting also does not provide information on borrower characteristics (race, ethnicity, gender) or on high-cost loans, all data that is required for mortgage loans. However, there are significant differences between mortgage and small business borrowers and loan terms that make adding this data difficult to implement.*

- Current CRA loan reporting does not provide a complete picture of small business lending.

*MCBC's report on small business lending<sup>4</sup> shows that small and medium-sized banks represent a significant and important segment of small business lending. Many smaller banks, exempt from CRA reporting, choose to report their small business lending. However without universal reporting, it is difficult to determine how well and by whom a specific market is being served.*

## **Access to Banking Services**

Participants at MCBC's Banking Services Committee CRA Roundtable Discussion agreed that CRA Service Test activities, including innovative and flexible products, financial education programs and other community development services, are important prerequisites to encouraging and maintaining low- and moderate-income residents as bank customers. Under current CRA guidelines, total Service Test activities for large banks only contribute 25 percent to an institution's CRA rating and most of that is related to branch location. Among smaller banks – many of which are particularly well positioned to identify and respond to consumer needs – Service Test activities are not even included in their CRA examinations except as a “special credit” category. Participation in many of the programs targeted to the un-banked and under-banked are labor intensive, for example, developing new products, offering staff assistance or working with community organizations to provide financial education. While some banks see this as part of their business plans and some see it as the right thing to do, more would be willing

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<sup>4</sup> *Small Business Lending in Massachusetts, 2005-2008*, Massachusetts Community & Banking Council. Available at [www.mcbc.info/reports/economicdevelopment](http://www.mcbc.info/reports/economicdevelopment).

to consider such programs is there were a more explicit incentive, in the form of CRA credit, to do so.<sup>5</sup>

*MCBC recommends increasing the value of such programs within the CRA Service Test and increasing the weight of the Service Test in CRA examinations.*

Roundtable participants also recommended:

- Many un-banked and under-banked residents are reluctant to utilize bank products and services, even when banks have made an effort to provide more flexible products designed to meet their needs.

*Bank outreach to underserved populations, for example, financial education programs, targeted marketing and/or special efforts intended to increase consumer comfort levels and trust, should receive recognition under the CRA Service Test.*

- Alternative service providers generally are required to clearly and publicly post their fees and other service costs. For many customers, this provides a clear, itemized statement of the cost of services that they may feel is not provided by banks. In addition, the Patriot Act and the Bank Secrecy Act require banks to establish Customer Identification Programs, including procedures that some customers may interpret as inconvenient, distrustful and, in some cases, discriminatory. This sometimes serves to reinforce preconceptions that banks are unwelcoming and to encourage the use of more user-friendly, albeit more costly, alternative service providers.

*Bank efforts to increase transparency regarding fees and service costs should be recognized under the CRA Service Test. In addition, banks should be encouraged to provide clear public disclosures on their Customer Identification Program, including differences in requirements for customers and non-customers, and to provide customers with guidance regarding questions or complaints on bank policy and/or practice.*

- Savings and investment accounts play an important role in asset building for low- and moderate-income residents and are often the first introduction to finances for students and young adults.

*Bank efforts to promote and encourage savings programs, for example, through targeted marketing, development of special products and/or participation in and/or support for financial education programs should receive credit under CRA.*

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<sup>5</sup> In a 2009 survey conducted by the Massachusetts Bankers Association and the Massachusetts Credit Union League, 73 percent of responding institutions reported that they would increase their participation in financial education programs if they received more CRA credit.

- Small and medium-sized banks are particularly well positioned to offer local residents an alternative to most costly check cashing and payday loan establishments and to respond to their need for fair, transparent and responsive products and services. However CRA examinations for small and medium-sized banks only measure performance under the CRA Lending Test.

*Community development services should receive greater weight in CRA examinations of small and medium-sized banks.*

## **Ratings and Incentives**

Participants at MCBC's Mortgage Lending Committee CRA Roundtable Discussion agreed that the four current ratings for CRA performance (Outstanding Satisfactory, Needs to Improve and Substantial Noncompliance) are inadequate to fully measure the full range of Lending, Investment and Service Test activities, especially for large banks.

*MCBC recommends adding an additional rating to provide a more meaningful report on bank CRA performance.*

## **CRA Disclosure and Performance Evaluations**

Participants at MCBC's Banking Services Committee CRA Roundtable Discussion agreed that CRA performance rating should be based on responsiveness to local needs and capacity of the institution to respond. They noted that different geographic areas have different needs and different institutions have different capacities to respond. These should be taken into account in evaluating bank performance. Some community organizations felt that their role in defining local needs has, over time, been diminished.

*MCBC recommends that community-based organizations and financial institutions should play a more active role in defining the Performance Context used by bank examiners.*

## **Other Comments**

In addition to the specific recommendations outlined above, participants in MCBC's CRA Roundtable Discussions had general comments on CRA and its role in a changing financial services market.

First, there was strong consensus on the need to maintain the **important connection between CRA performance and safety and soundness standards**. However, there were differences of opinion on how effectively this is currently being administered. Some participants saw a current disconnect between safety and soundness and CRA regulators within the agencies; some were of the opinion that CRA is not a priority for the regulatory agencies.

Second, there was also strong consensus on the **need to level the playing field**. Today's financial services market is very different from when CRA was last revised and certainly different from when it was first established. In 1995, MCBC's first report on mortgage lending patterns showed that, in 1990, Massachusetts banks and credit unions accounted for nearly 80 percent of all of the mortgages in the city of Boston. In 2005, their market share was below 20 percent, with over 80 percent of the mortgages being provided by independent mortgage companies and subprime lenders.<sup>6</sup> Mortgage and real estate brokers have come to play important roles in the mortgage market. On the small business side, MCBC's reports have shown the increasing activity of credit card lenders. In 2008, credit card lenders originated more than 200,000 small business credit card loans in Massachusetts, accounting for 77.5 percent of the total number of reported small business loans and 25.2 percent of loan dollars.<sup>7</sup> Changes in credit card policy and decisions by credit rating agencies can have a direct and significant impact on the ability of small business owners to obtain and maintain their credit card loans, often their only source of small dollar loans. For consumers, there has been a dramatic increase in the number of alternative financial service providers, including check cashing establishments and payday lenders.

Many of these non-bank lenders and service providers play, or appear to play, by different rules than those of CRA-covered banks. Participants in MCBC's CRA Roundtable Discussions agree that they should be held to the same standards of performance.

Finally, participants in MCBC's CRA Roundtable Discussions agreed that bank trade associations, community-based organizations and regulatory agencies have an important role to play in providing **more and better information on best practices, successful models and innovative products and services**. To respond to community needs, banks need information on the costs and benefits of new products and services. At the same time, community-based organizations, local banks and public agencies should conduct more outreach and provide more information to the community on the costs and benefits of mainstream and alternative financial products and services.

Once again, MCBC appreciates the opportunity to offer comments on the current CRA regulations. CRA has been an important and effective incentive for community development here in Massachusetts and across the country. We applaud the agencies' effort to ensure its relevancy in a changing financial environment. Please direct any questions regarding MCBC's comments to MCBC's Manager, Kathy Tullberg, at 857 350-4916 or via e-mail at [ktullberg@mcbc.info](mailto:ktullberg@mcbc.info).

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<sup>6</sup> See Table 18, *Changing Patterns XVI*.

<sup>7</sup> *Small Business Lending in Massachusetts, 2005-2008*.