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To: Comments
Subject: Proposed Rule CRA Regulation AD60

BOSTON PRIVATE BANK
& TRUST COMPANY

TO: Federal Deposit Insurance Corporation
http://www.fdic.gov/regulations/laws/federal/notices.html

FROM: Esther Schlorholtz, Director of Community Investment,
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DATE: August 17, 2010

RE: Community Reinvestment Act Regulation Hearings RIN 3064-AD60

Boston Private Bank & Trust Co. is pleased to submit the following comments regarding modernization of the regulations that implement the Community Reinvestment Act (CRA).

Boston Private Bank & Trust Co. (BPBTC) is a $3.4 billion, full service commercial bank headquartered in Boston, Massachusetts. The bank has an Outstanding CRA rating from both the FDIC and the Massachusetts Division of Banks for performance from 2000. BPBTC has a strong commitment to its community, and strives to be a responsible lender and leader in our community.

Below are our comments related to the questions in the Proposed Rules of June 10, 2010.

General Comments

CRA and Safety & Soundness. Boston Private Bank strongly believes that the connection between CRA performance and Safety & Soundness standards should be preserved and enhanced. We consider CRA eligible lending that is responsive to our community to be good business that performs well if it is underwritten in ways that ensures that our borrowers have the capacity to repay over the long term. We recognize that if a loan is suitable for our borrower and beneficial to our community, it has a high likelihood of being a performing loan for the bank.

In order to be viable business for a bank, CRA eligible lending should cover costs and also provide a reasonable return that encourages banks to do more community lending.

Currently, on occasion some banks receive undue pressure and threats of reputational damage from some advocacy groups to provide below-market financing that does not cover basic costs. This should be discouraged through regulatory changes. CRA Sunshine provisions should be enhanced to allow for greater transparency and documentation of such actions since these actions have the effect of undermining a bank's ability to meet its CRA responsibilities consistent with Safe & Sound operations, which includes profitability. Additionally, if lenders provide below-market loans and related costs, the value of those below-market transactions should be considered as CRA investments for banks of all sizes, not just those that are evaluated using the Investment Test. Clear guidelines should be established that define how banks will determine the amounts to be considered for CRA investments. For example, HMDA reporting lenders must report the spread (difference) between the annual percentage rate (APR) on a loan and the rate on Treasury securities of comparable maturity; the amount of the difference would be considered as a CRA investment.

Leveling the Playing Field. Many non-bank lenders and service providers play by different rules than those of CRA-covered banks; they should be held to the same standards of performance as banks, including compliance with both CRA and Safety & Soundness standards. CRA should be expanded significantly to cover all types of lenders and service providers. In recent years, our bank received numerous applications for mortgage financing from borrowers with modest incomes seeking to buy homes far above their ability to repay. Borrowers that we could not finance were able to obtain financing from largely out-of-state lenders and mortgage companies even though they could not be financed by CRA regulated banks. Many of these borrowers may have gone on to receiving high cost loans and to losing their homes to foreclosure. All lenders should be held to high standards of both CRA and Safety & Soundness.

Geographic Coverage

We recommend that the definition of a CRA covered institution's Assessment Area be expanded to include *all geographic areas* in which it does a significant portion of lending, not just those areas where it has branch offices and deposit-taking facilities. The definition of a "significant" portion of lending should specify a certain minimum number of loans in a political subdivision or defined geographic area in order to reflect local impact. For example, in Massachusetts, mortgage lenders that make 50 or more loans in the state are subject to the Commonwealth's oversight.

The experience in Massachusetts shows that large, national lenders with significant mortgage presence are not subject to federal CRA regulations in the state because they do not have branch locations or deposit taking facilities here. Yet their impact on the market is extensive even though these loans likely form a small percentage of their total mortgage activity. As new technologies allow lenders to service distant locations, evaluating geographic coverage based on number of loans in an area allows greater and more equitable oversight of CRA performance for all covered institutions, and also allows for more effective evaluation of local impact.

CRA Performance Tests, Asset Thresholds and Designations

The agencies should revise the criteria used to assess performance under the current tests. Currently, a bank such as ours with approximately $3.4 billion in assets is evaluated similarly to multi-state banks that are many times larger, and our lending activity is sometimes compared directly to theirs. Institutions with assets between $1.1 and $10 billion should be evaluated, not compared to large multi-state banks, but based on their business model, capacity, resources, context and ability to respond to local needs consistent with their size.

Affiliate Activities

Lending performance of all company affiliates doing business in a geographic area should be included in a bank's CRA examination. Local impact, not corporate organization, should be the criteria for CRA evaluation.

Small Business and Consumer Lending Evaluations and Data

Mortgage lending tends to receive more attention in CRA examinations than small business lending. More weight given to small business lending in CRA exams may provide an incentive for banks to do more of this lending, if they are involved in small business lending.

Small dollar loans to small businesses for business purposes generally require more management and are less profitable. Increasing the CRA value of such loans may serve as an incentive for doing this lending, considering its importance for job retention and growth. Current CRA reporting does not distinguish between a credit card, a small dollar loan, a line of credit or a complicated small business loan. Reporting should be enhanced to enable tracking of such characteristics.

If borrower characteristics such as race, ethnicity and gender are collected, then there must be national standards and rules set for how businesses qualify. Without national standards and methods of identification, it is extremely difficult for banks to determine such characteristics for small businesses.

Access to Banking Services

Under current guidelines, Service Test activities for large banks contribute about 25 percent to an institution's CRA rating and most of that is related to branch location. Banks under $1.1 billion do not even receive consideration for CRA services, even though they are well positioned to identify and respond to consumer needs; they should receive consideration.

Beyond evaluating branch locations, there are numerous CRA services that should be considered eligible, and more consideration should be given to them. The provision of financial education programs and other services that strengthen consumers' ability to make wise financial choices should receive significantly greater consideration.

Community Development

Mortgage lending tends to receive more attention in CRA examinations than both small business lending and community development lending. Community development projects have significant impact on a neighborhood related to housing, jobs and services, and the weight given to financing them should be much greater than is currently the case. In addition, many community development loans are part of highly complex financing structures that include multiple public and private funding sources. Those banks that finance such projects, consistent with Safety & Soundness standards, should receive significantly greater CRA consideration than they currently receive.

Ratings and Incentives

The current rating system would benefit by adding the additional categories of "High Satisfactory" and "Low Satisfactory." Massachusetts offers a High Satisfactory CRA rating that recognizes those institutions that have made exemplary efforts but may not be quite at the level of Outstanding. This additional rating would recognize these banks for their efforts to go beyond the standard of Satisfactory, and may encourage greater engagement in meeting local credit needs. Similarly, those banks that are struggling to comply with CRA but are performing at a below Satisfactory level, despite striving to achieve a Satisfactory level, should be able to receive a "Low Satisfactory" rating. This would encourage them to strive harder as their capacity to improve performance advances.

Effect of Evidence of Discriminatory or other Illegal Credit Practices on CRA Performance Evaluations

If there is clear evidence of discriminatory or other illegal credit practices, banks should receive downgrades in their CRA performance.

CRA Disclosures and Performance Evaluations

CRA performance ratings should be based on responsiveness to local needs and capacity of the institution to respond. Different geographic areas have different needs and different institutions have different capacities to respond. These should be taken into account in evaluating bank performance. Examiners should make greater effort to understand a bank's performance context, capacity and ability to respond to community credit needs.

Thank you for this opportunity to comment on CRA. CRA has been responsible for literally billions of dollars of investment in local communities, especially encouraging lending, investment and services in low- and moderate-income areas and helping people of more modest means to obtain access to credit and banking services. It should be strengthened and encouraged.

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