



Neighborhood Economic Development Advocacy Project

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**Before the Board of Governors of the Federal Reserve System, Federal Deposit
Insurance Corporation, Comptroller of the Currency, and the
Office of Thrift Supervision**

Public Hearing on Community Reinvestment Act Regulations

July 19, 2010

Thank you for the opportunity to testify at today's hearing. There is much to say about the Community Reinvestment Act (CRA) and how its regulations might be strengthened. For today, however, I will focus on just a few areas that are important to us at the Neighborhood Economic Development Advocacy Project (NEDAP), and we will seek to submit more detailed written comments by the August 31, 2010 deadline.

NEDAP is a nonprofit resource and advocacy center that provides legal, technical and policy support to community groups and individuals in New York City's low income neighborhoods and communities of color. NEDAP was founded in 1995 with the mission of promoting community economic justice and eliminating discriminatory economic practices that harm communities and perpetuate inequality and poverty.

Today's hearing notice presents the question whether, and how, the CRA regulations should be revised to better serve the Act. It's high time that the federal banking agencies revise the CRA regulations to reflect sweeping changes that have occurred in the financial services world – not the least of which is the emergence of new manifestations of redlining, and reverse redlining, which continue to be a plague on neighborhoods.

In its first years, NEDAP focused almost exclusively on providing capacity-building training and strategic advocacy support to community groups in historically redlined and underserved communities. We helped grassroots groups use the CRA as an effective tool for holding banks accountable to their neighborhoods, as a way to expand access to sorely needed financial services, loans, and investments for development and preservation of affordable housing, small business, microenterprise, and community development financial institutions.

It was not long before the dramatic changes taking place in the financial services industry – new electronic banking technologies; the suddenly regional, national and global scale of banks; the

explosion in subprime securitization and lending; and the disastrous proliferation of high cost, abusive financial products and services; to name just a few – led to an increasingly separate and unequal banking system in which lower income communities and neighborhoods of color were now flooded with high cost credit and financial services. These financial products and services were destructive and the rest, as we know, is history.

A two-tiered credit system has emerged over the past ten to fifteen years, in which people living in lower income communities and communities of color are targeted for a higher cost, often abusive, under- and unregulated set of inferior financial services than people who live in whiter, more affluent communities. This segmented financial services system has harmed families and neighborhoods, and has served to perpetuate inequality and segregation. Although reverse redlining runs counter to the spirit and intent of CRA, the CRA regulations have yet to address these inequities adequately.

Our global recommendations, based on the changed environment, include the following:

1. The regulations and exam process need to underscore the C in CRA. A bank's performance should be considered at the community level. In the more than 15 years since NEDAP has been working with groups on CRA issues, the CRA regulatory lens has become less and less focused on discrete neighborhoods. The CRA lens for large banks, in particular, is beamed out to the MSA level. Bank examiners have told me that they will not examine banks at the neighborhood level, but in terms of their aggregate performance, in larger geographies. But examining banks' activities in terms of averages in large geographies washes over any local patterns and conceals what are frequently dramatic disparities in performance between neighborhoods at the local level. New York City's MSA, for example, consists of eight large counties – some of them, by themselves, are larger than most U.S. cities – and examiners should consider banks' CRA performance at the sub-county and neighborhood levels to ascertain whether banks are fairly meeting community credit needs. New York, like many other cities, is hyper-segregated, with neighborhood race and income demographics changing markedly from one neighborhood to the next, and examining banks' CRA performance by large geographies obscures the relevant analysis for CRA purposes of whether banks are meeting community credit needs.

A simple mapping of CRA-relevant data at the outset of a CRA exam would provide a more nuanced view than the aggregate approach now permits, and would raise flags if the bank is engaged in redlining of specific communities. The new regulations should also ensure that examiners engage community groups meaningfully in the CRA exam process. Regulators have for years contacted community groups during a CRA exam without disclosing which bank they are examining, and we recommend revising the regulations to include a process for incorporating community organizations explicitly in the exam.

2. The CRA exam must consider banks in their totality. Under current CRA regulations, banks can receive favorable CRA ratings based on the performance of their insured depository, even though their affiliates are directly engaged in and responsible for practices that harm

communities and serve them inequitably – such as through discriminatory tax refund anticipation lending, and abusive credit card and debt collection practices. NEDAP has long taken the position that the regulators should consider all of banks’ mortgage lending affiliates – originators as well as servicers – in the CRA exam. They should also consider activities of banks’ consumer financial services providers, such as credit card issuers. The lessons we have learned from not regulating banks’ subprime and fringe lending activities, for example, have only underscored the unjustifiability of examining affiliates only at the bank’s election.

Similarly, CRA exams should identify not only banks’ affirmative activities but also harmful practices by the banks themselves. A prime example is how CRA examiners have essentially ignored banks’ abusive overdraft practices, which have sapped billions of dollars from the very communities that CRA is intended to address.

- 3. Banks should not receive a satisfactory or better rating if there is evidence that they have discriminated against people or communities on the basis of race, color, national origin, gender, or other protected classes.** Simply put, banks are not serving communities equitably if they are engaged in discriminatory activity, and the CRA can act as a vital deterrent against discriminatory practices if there are specific adverse consequences for their CRA rating. There are ample examples of banks’ receiving satisfactory or better CRA ratings notwithstanding a finding of discrimination by the Department of Justice or other enforcement agency.
- 4. CRA’s assessment area definition needs to be updated.** The current regulatory definition of assessment area has the perverse effect of regulators’ ignoring banks’ harmful practices, as long as they fall outside the banks’ CRA assessment areas. In New York, as across the country, CRA-covered banks that do not include New York within their service area have no sense of accountability and have seen fit to make higher cost and more reckless loans in our communities than within their service areas.
- 5. Banks’ philanthropy should not be a substitute for community reinvestment.** We would never discourage banks from engaging in charitable giving. The CRA regulations should make clear, however, that philanthropic giving is not a proxy for meeting community credit needs. Before the market crash, for example, as community groups sounded the alarm on abusive lending practices that were devastating historically redlined neighborhoods, banks proudly touted their support for financial literacy programs, as if they were an antidote to predatory lending practices. Giving grants is easier for banks than finding ways to meet community credit needs through direct lending, services, and investment, and consideration of philanthropic activity should not figure into the CRA exam.

I would be happy to answer any questions you might have. Thank you again for the opportunity to testify.