

August 30, 2010

Office of the Comptroller of the Currency
Docket ID OCC-2010-0011
regs.comments@occ.treas.gov.

Board of Governors of the Federal Reserve System
Docket No. R-1386
regs.comments@federalreserve.gov .

Federal Deposit Insurance Corporation
RIN 3064-AD60
Comments@FDIC.gov

Office of Thrift Supervision
ID OTS-2010-0019
regs.comments@ots.treas.gov.

Re: Request for Comments – Community Reinvestment Act

Dear Regulators:

Advocates for Basic Legal Equality thanks you for your questions on how to strengthen the Community Reinvestment Act (CRA).

Advocates for Basic Legal Equality is a not-for-profit law firm that provides free legal services in civil matters to the low income and elderly who can not afford to pay for a lawyer. We serve 32 counties in Northwestern Ohio, roughly from Dayton to Toledo to Mansfield, from offices in Dayton and Toledo. We work closely with Legal Aid of Western Ohio which serves the same area. We provide assistance in matters of family, housing, consumer, civil rights and economic opportunity. ABLE is a participant in Ohio's "Save the Dream" program, where we provide legal assistance in order to save the homes of borrowers in foreclosure. We and our predecessor legal services programs also have years of experience helping clients who received predatory mortgage loans and payday loans. ABLE is a member of the National Community Reinvestment Coalition and urges the regulators to give serious consideration to their testimony at recent hearings and other comments concerning CRA.

**OHIO'S FORECLOSURE CRISIS SHOWS THE NEED FOR REGULATION OF
LENDING PRACTICES**

Ohio has been in a foreclosure crisis for years. Since 1995, the number of foreclosure filings has at least quadrupled in all but a few of Ohio's counties and has quintupled statewide.¹ In 2009, there were 89,053 foreclosures filed in Ohio. Of these 21,125 were in our service area, including 4703 foreclosures filed in Montgomery County (Dayton), 4,491 in Lucas County (Toledo), and 1,104 in Clark County (Springfield)² 2010 figures appear to be as high or higher. Nationally mortgage loan default rates remain high. While we hope that some of this slight decline in filings reflects a willingness of loanholders to modify mortgages through the federal government's HAMP and other programs, results have so far been disappointing. People are losing their homes in large numbers. Loss of homes is a tragedy to a family that has staked its dreams on homeownership. But it is also a tragedy to the surrounding community.

Dayton's Santa Clara neighborhood is the 9th most vacant in the country at 40.5% vacancies, as reported by the Associated Press³. Several other similar neighborhoods are found in Ohio. Low income and minority neighborhoods are also particularly vulnerable to abandonment and so-called "bank walkaways" (where mortgage holders do not follow through with sheriff's sales in foreclosure or try to bid on the properties at foreclosure sale, leaving them technically in the name of the former owner). Vacant houses result in crime, fires,⁴ deteriorating property values and unpaid taxes.⁵ Local communities must therefore cope with higher costs while being less able to adequately fund services such as police, fire and schools⁶.

¹ Z. Schiller and A. Hirsh, *Policy Matters Ohio, Foreclosure Growth in Ohio 2009*, available online at <http://www.policymattersohio.org/pdf/ForeclosureGrowthInOhio2009.pdf>

² New Foreclosure Filings 2005 through 2009, available at online <http://www.supremecourt.ohio.gov/JCS/casemng/foreclosuresStats.xls>

³ <http://www.daytondailynews.com/news/ohio-news/ohio-has-3ohio-has-3-most-vacant-neighborhoods-in-u-s--107025.html>

⁴ "5-house fire shows risk posed by vacant homes." Dayton Daily News, August 9, 2010.

⁵ W. Apgar, M. Duda and R. Gorey, *The Municipal Cost of Foreclosures: A Chicago Case Study*, at <http://www.nw.org/network/neighborworksProgs/foreclosuresolutionsOLD/documents/2005Apgar-DudaStudy-FullVersion.pdf> (2005). Community Research Partners and Rebuild Ohio, *\$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities*, at http://greaterohio.org/rebuildohio/FullReport_Nonembargoed.pdf.

⁶ A study of eight Ohio cities identified nearly \$64 million in costs to local jurisdictions related to vacant and abandoned properties. This included nearly \$15 million in city service costs such as code enforcement, boarding, demolition, maintenance, and police and fire services, and over \$49 million in lost tax revenues from demolitions and tax delinquencies. Community Research

Here and throughout the country, the foreclosure crisis has been particularly harmful to minority communities.⁷ Subprime mortgage lending, with its high costs and often predatory features, was particularly concentrated in minority communities.⁸ In a community like Dayton, which has long been a highly divided community racially, the foreclosure crisis has exacerbated the perceived unattractiveness of its minority areas to outsiders.

THE COMMUNITY HAS BEEN DAMAGED BY THE LACK OF SOUND AFFORDABLE LOANS FROM LOCAL LENDERS

Much of the foreclosure crisis can be attributed to practices that originated with subprime mortgage lending by national and multinational lenders, and spread throughout the mortgage marketplace. National and multinational lenders paid large up front fees to local mortgage brokers or other originators who generated high cost unsuitable loans, and then “securitized” the loans by selling them to paper trusts attracting institutional investors. These trusts are usually managed by distant trustee banks, with loan servicing done by distant servicing companies, often affiliated with other distant banks. These remote entities have little concern for individual communities. This can lead to neighborhoods riddled with foreclosures and abandonment, such as the Santa Clara area of Dayton.

Partners and Rebuild Ohio, *\$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities*, at http://greaterohio.org/files/policy-research/FullReport_Nonembargoed.pdf. See also Alan Mallach , *Addressing Ohio's Foreclosure Crisis: Taking the next steps*, at http://www.brookings.edu/%7E/media/Files/rc/papers/2009/0605_ohio_foreclosure_mallach/0605_ohio_foreclosure_report.pdf

⁷ Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, 9, (June 18, 2010) <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf>

⁸ Stock (the Center for Business and Economic Research at the University of Dayton), *Predation in the Subprime Lending Market: Montgomery County Executive Summary*, (October 25, 2001),; Bellamy, *the Expanding Role of Subprime Lending in Ohio's Burgeoning Foreclosure Problem* (2001), <http://www.cohio.org/projects/ocrp/SubprimeLendingReport.pdf> studied three urban counties, including Montgomery County, and found that subprime loans generated three times as many foreclosures as prime loans. *Id.* at 3.

The recent Pennsylvania foreclosure study was able to look at all subprime loans originated in certain counties in calendar years 1998 and 1999, and then determine how many were the subject of a foreclosure filing in the four year period from 2000 to 2003 inclusive. The study authors found that subprime mortgages were foreclosed upon at a rate varying from 20% in most counties to 40% in one Philadelphia area county. The Reinvestment Fund. *Mortgage Foreclosure Filings in Pennsylvania* (2005), <http://www.trfund.com/resource/downloads/policypubs/mortgage-foreclosure-filings.pdf>.

Many subprime borrowers were actually eligible for prime loans which local banks could provide, but did not or could not get them.⁹ Local banks, thrifts and credit unions could have been making good suitable loans to those borrowers. Because these local lenders were unwilling to make these loans, borrowers were instead driven to subprime lenders

This lack of concern shows itself when loanholders have been unwilling to modify mortgage loans, either voluntarily or through the HAMP program, and let borrowers remain in their homes. Loanholders and their servicers have often frustrated borrowers by making repeated demands for paperwork, losing paperwork that is sent to them, and making false promises or renegeing on promised modifications.

High cost payday lending has also plagued our area. An attempt by the Ohio legislature to reduce the cost of payday lending has been unsuccessful, as the lenders found other regulatory schemes that allowed them to continue high cost lending, often with APRs near 400%. Everyone who borrows from a payday lender has an account in a bank or similar depository institution, but their bank will not make affordable short term loans to them.

The community of Lima, which we serve, has been plagued by a lack of banks in the southern and more highly African American neighborhoods of the City. The Federal Reserve made an appearance there a few years ago, but no significant improvements resulted.

Joblessness and plant closings plague our area. Large employers like General Motors, DHL and Delphi have closed plants or moved elsewhere, costing the jobs of people employed there and having a ripple effect on the jobs of others. Retailers have been abandoning urban neighborhoods, particularly supermarkets such as Krogers, which closed stores in Dayton and Toledo, leaving these areas without access to healthy affordable foods. This is a particular hardship to the elderly and others without cars. Small businesses should be the engines of employment as well as service, but small businesses have lacked access to credit.

⁹ A Freddie Mac study reported that anywhere from between 10% to 35% of subprime borrowers qualified for prime-rate loans. Engel & McCoy, A Tale of Three Markets: The Law and Economics of Predatory Lending, 80 Tex. L. Rev. 1255, 1264, n. 20 (May 2002), citing Freddie Mac, Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families Ch. 5, at nn.5-6 (Sept. 1996),

THE COMMUNITY REINVESTMENT ACT SHOULD ENCOURAGE LENDING BY LOCAL FINANCIAL INSTITUTIONS WHICH HAVE A STAKE IN THE SUCCESS OF THE COMMUNITY IN WHICH THEIR DEPOSITORS LIVE

The Community Reinvestment Act was designed to deal with this problem by getting depositories that take the money of people in the neighborhoods to serve those neighborhoods. It has been singularly ineffective, due to loopholes, lack of meaningful enforcement including private right of action, and similar problems. And while some argue that the Community Reinvestment Act was to blame for the bad lending practices of the finance industry, we submit that the lack of community reinvestment by good lenders with sound affordable products allowed the abusive lenders and their exploitative, unsound products to dominate the inadequately regulated marketplace.

CRA promotes care and sustainability in lending. The law requires safe and sound lending, and would have been a preventative cure to the foreclosure crisis had it covered a broader range of institutions. Research conducted by Federal Reserve economists documents that home loans made by banks in their CRA assessment areas are about half as likely to end up in foreclosure as loans issued by independent mortgage companies.¹⁰ In addition, CRA small business and community development lending exceeded \$1 trillion for America's neighborhoods from 1996 through 2008.¹¹

Meaningful reform to CRA will ensure economic recovery that promotes sustainable lending to small businesses for job creation and responsible home lending. The most crucial reform requires action from Congress – Congress needs to apply CRA broadly throughout the financial industry in order to maximize safe and sound lending and investment in communities. Until Congress takes that necessary step, regulatory changes can improve the CRA.

PROPOSED IMPROVEMENTS IN THE CRA

Although CRA has been instrumental in boosting lending and investing, the neglect of certain parts of the regulation has meant that CRA has not realized its full potential. If CRA had been updated, the level of CRA-lending and investing would have been substantially higher. In particular, we believe that a regulatory rulemaking should address the following areas:

¹⁰ Elizabeth Laderman and Carolina Reid, Federal Reserve Bank of San Francisco, "CRA Lending during the Subprime Meltdown in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act," a Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009,

http://www.frbsf.org/publications/community/cra/cra_lending_during_subprime_meltdown.pdf

¹¹ Figures calculated by NCRC from data available on <http://www.ffiec.gov>.

1. Assessment Areas

As currently defined by the CRA regulation, assessment areas – the geographical locations covered by CRA exams – generally consist of metropolitan areas or counties that contain bank branches. However, while some banks still issue loans predominantly through branches, others make the majority of their loans through brokers and other non-branch means.

As a result of the current definition of assessment areas, the share of all home purchase loans made by banks operating in their CRA assessment areas has dropped to about 25 percent.¹² Narrow assessment areas facilitate problematic lending practices that are not scrutinized on CRA exams. Research demonstrates that lending by institutions not covered by CRA or by banks outside of their assessment areas are more likely to be high-cost.¹³

The Office of Thrift Supervision (OTS) is the one agency that went beyond official assessment areas on CRA exams for non-traditional thrifts, but these exams still examined only a minority of the thrifts' loans. We ask the agencies to significantly improve upon the OTS' precedent and meaningfully include the great majority of bank and thrift loans on CRA exams.

2. Mandatory Inclusion of Mortgage Company Affiliates on CRA Exams

Under CRA, banks have the option of including their non-depository affiliates, such as mortgage companies, on CRA exams. Banks are tempted to include affiliates on CRA exams if the affiliates perform admirably, but will opt against inclusion if the affiliates are engaged in risky lending or discriminatory policies. We believe the agencies have the authority to include all non-depository affiliate lending on CRA exams to ensure that the lending affirmatively responds to credit needs in a safe and sound manner.

3. Include Bank Lending and Service to Minorities on CRA Exams

Given the evidence of lending disparities by race, we believe that CRA exams must explicitly examine lending and services to minority borrowers and communities. A large body of research shows that minorities received larger

¹² Ren Essene of the Federal Reserve Bank of Boston and William C. Apgar of the Joint Center for Housing Studies, Harvard University, *The 30th Anniversary of the CRA: Restructuring the CRA to Address the Mortgage Finance Revolution*, in *Revisiting the CRA: Perspectives on the Future of the CRA*, eds. Prabal Chakrabarti et al., A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, 2009.

¹³ Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, Higher-Priced Home Lending and the 2005 HMDA Data, Federal Reserve Bulletin, Fall 2006, see page A154.

percentages of subprime loans than whites, even after controlling for borrower creditworthiness and other characteristics.¹⁴

CRA exams should measure lending by race of borrower and neighborhood just as the exams currently assess lending by income level of borrower and neighborhood. CRA exams should also consider bank branches by race of neighborhood to ensure that minority neighborhoods have sufficient numbers of branches. This would prevent situations like we see in Lima, Ohio.

CRA-covered banks primarily make prime loans. If CRA exams assess bank performance in lending and branching in minority neighborhoods, it is likely that CRA exams will motivate more bank lending and branching in minority neighborhoods. Since banks are prime lenders, this means more prime loans in minority neighborhoods, and more robust competition among banks and other lenders in minority neighborhoods. It was too easy for subprime lenders to fill the vacuum in communities of color which suffered from a lack of vigorous competition among lenders. CRA can motivate banks to compete more vigorously in minority neighborhoods and offer more prime loans and product choice. And offer more branches which would serve as alternatives to payday lenders, check cashers and other fringe providers that exploit low income communities.

Before the 1995 changes to the CRA regulation, CRA exams considered lending to minorities as an assessment factor, suggesting the agencies thought they had the authority to consider lending to minorities on CRA exams.

4. CRA Exam Ratings and Weights

The scale of four possible ratings does not provide meaningful distinctions in performance and has resulted in a 98 to 99 percent pass rate over the last several years. The agencies should introduce Low and High Satisfactory as possible ratings in addition to the four existing ratings.

In addition, the agencies should develop better weighting systems so that routine investments like purchasing loans on the secondary market do not

¹⁴ NCRC, *Foreclosure in the Nation's Capital: How Unfair and Reckless Lending Undermines Homeownership*. Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002. Available via pcalem@frb.gov. also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter, *Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622

receive as much weight as more difficult investments such as equity investments in small businesses.

We do not believe that major changes in CRA examinations are desirable. Some will argue that more banks should be eligible for streamlined exams; we believe that the recent changes went too far in making exams too easy for mid-size banks. Rigorous exams require more safe and sound lending from institutions.

5. CRA Enforcement Mechanisms

Mergers have traditionally been a major means of CRA enforcement but the frequency of mergers is likely to continue to decline over the next several years. Consequently, additional enforcement mechanisms are needed. For instance, banks could be required to submit CRA improvement plans, subject to public comment, when they receive either a low rating overall or in any assessment area. CRA exams and merger approval orders could include an “expectations section” that either mandates or recommends (depending on the extent of the deficiency) improvements to specific aspects of CRA performance such as a particular type of lending or investment.

The agencies must also boost the rigor of the fair lending reviews that probe for evidence of illegal and discriminatory lending. Fair lending reports on CRA exams must be detailed explanations of the fair lending tests used instead of the one or two sentences currently on most CRA exams. In addition, the concept of illegal and discriminatory lending must be expanded to include unsafe and unsound lending. Banks have failed CRA exams because they made or financed unsafe loans; the fair lending review must routinely indicate whether the review found evidence of unsafe and unsound loans.¹⁵

Some commentators will favor “incentives” to coax institutions into improved CRA performance. We would be supportive of exploring programmatic methods to increase tax credits under the Low Income Housing Tax Credits or New Markets Tax Credit for institutions receiving Outstanding ratings. But we are opposed to exemptions from CRA review on merger applications or decreasing the frequency of CRA exams for institutions with Outstanding ratings. CRA performance is likely to decline when institutions receive less frequent exams and public scrutiny.

¹⁵ See FDIC CRA exam of CIT Bank of May 2008. The bank failed because it purchased high levels of problematic subprime and non-traditional loans. http://www2.fdic.gov/crapes/2008/35575_080512.PDF

6. Data Enhancements

By holding lenders accountable, publicly available data, particularly the Home Mortgage Disclosure Act, has been vital for increasing responsible lending to traditionally underserved borrowers. Applying a similar rationale, the limited CRA small business data must be enhanced to include the race and gender of the small business borrower. In addition, the agencies must require census tract level disclosure of community development loans and investments. In order to promote access to basic banking services, the agencies must require disclosure of enhanced data that shows types of deposit account (such as basic lifeline) by census tract location of the residence of bank customers. Likewise, data on the type consumer lending by borrower demographics and census tracts can promote access to affordable consumer loans and alternatives to abusive payday loans. Improvements in data disclosure will enhance the ability CRA exams to assess if banks are responsive to the full range of credit needs of communities.

7. Community Development

Some have suggested that banks receive favorable CRA consideration for investing in multi-regional funds for Low Income Housing Tax Credits and other purposes. In the interest of serving diverse geographical areas including rural areas, we are supportive of these suggestions as long as banks have adequately responded to the needs in their assessment areas. A bank could be required to have a rating of Outstanding on the investment test, for example, before being allowed to invest outside of their assessment areas in multi-regional funds.

CONCLUSION

The severity of the foreclosure crisis would have been substantially lessened if the entire financial industry had an obligation to serve all communities consistent with safety and soundness. We believe that the regulatory agencies can contribute significantly to ensuring sustainable economic recovery by updating the CRA regulations.

Truly yours,

Stanley A. Hirtle
Attorney at Law
Advocates for Basic Legal Equality – Dayton Office
333 W First St., Suite 500
Dayton, OH 45406
(937) 228-8104 - Telephone
(937)535-4600 - Facsimile
shirtle@ablelaw.org

