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Economic Growth and Regulatory Paperwork Reduction Act

OUTREACH MEETING

Federal Reserve Board ■ Federal Deposit Insurance Corporation ■ Office of the Comptroller of the Currency

Chicago, Illinois
October 19, 2015

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the Agencies) to request comments identifying areas of their regulations that are outdated, unnecessary, or unduly burdensome. The Agencies have begun publishing a series of four Federal Register notices that provide an opportunity to comment on their regulations through Regulations.gov. Today's outreach meeting is an additional way the Agencies are requesting comments.

You may use this space below to provide written comments to the Agencies. Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not include any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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Comments:

See attached.

Statement of Calvin Bradford on behalf of Illinois People's Action (IPA)
before the Economic Growth and Regulatory Paperwork Reduction Act
Outreach Session at the Federal Reserve Bank of Chicago
October 19, 2015

Thank you for this opportunity to address critical issues related to the need for updating the enforcement of the Community Reinvestment Act. As one of the people who worked with Senator Proxmire's staff on the drafting of the CRA, my community and professional experience predates the regulations. As conceived, the CRA was designed to provide an incentive for community development banking, and to enhance the fair lending laws.

Those of us from legislative staffs, community bankers, banking regulators, civil rights groups, economic development entities and community-based organizations saw the legislation as a means to build a community economic development banking system in the United States. Before the CRA, our country supported banking practices to build lagging economies in third world countries, but we had no banking structure to support the rebuilding of lagging and underserved economic communities in America.

Originally, and for many years, the CRA provided a mechanism for local and regional community organizations and economic development organizations to develop partnerships with banking institutions and to challenge banks to engage in providing full services to all communities and to develop new and innovative programs and products to meet the needs of underserved communities and markets. We had anticipated that as more banks engaged in these activities, the regulators would identify these best practices and hold them as the norm for granting the highest ratings to exemplary institutions. We certainly did not expect banks to develop predatory products and engage in fraudulent and abusive practices under the guise of serving minority and low- and moderate-income communities.

In those days, many new and creative programs and products were created – largely out of CRA challenges and the consequent partnerships with individual banks. Fair lending was initially a separate rating category that provided additional support for minority communities that had long been redlined. Illinois People's Action has been one of the organizations operating in smaller MSAs and rural areas that, along with many larger city organizations, developed successful reinvestment programs, typically though CRA challenges and agreements.

But over the years, and particularly in the years leading up to the Great Recession, the regulatory agencies have abandoned their role in CRA enforcement, generally ignored discriminatory lending, and even given banks CRA credit for predatory and abusive lending and servicing practices that have contributed to the loss of economic growth and stability for both individuals and entire communities.

In November of 2010, IPA led a group of 15 other local, state, and national organizations in challenging the Comptroller of the Currency for giving "Outstanding" ratings for two of the nation's largest banks that played major roles in dragging us into the Great Recession. As Jack Porter, a spokesperson for IPA, stated at that time, these were "two of the four largest banks in America that played commanding roles in originating and investing in the subprime mortgage markets that precipitated this Great Recession and the meltdown of the global financial markets. Their unsafe practices put millions out of work, tore apart the economic fabric of local communities, and destroyed the personal finances of millions of American families. Clearly, such practices should result in failing community service ratings."

Since that time, the litany of abuses (unwarranted foreclosures, failure to properly maintain REOs, fraudulent certifications of FHA loans, deceptive marketing of credit card services, the imposition of unwarranted fees, etc.), has continued. The results of these practices, which have had the greatest negative impacts on minority and lower-income communities, have been lawsuits and settlements with the prudential regulatory agencies, the CFPB, HUD, DOJ, the Attorneys General of scores of states, private fair housing and civil rights organizations, individual plaintiffs, and even some city governments.

Meanwhile, some of the largest banks have had no CRA evaluations for several years and take advantage of their previous high ratings. One of the four largest lenders in the nation that was subject to our challenge has subsequently settled discrimination, fraud, and abusive servicing claims, but has not had a CRA evaluation since 2008, when its participation in the mortgage meltdown contributed to the national financial crisis. The lenders that have had CRA evaluations have almost universally been given high and passing marks, even when the evaluations document the abusive and discriminatory practices in which the banks have engaged.

Don Carlson, IPA's Executive Director, said at the time of our 2010 challenge to CRA enforcement, the passing ratings "are a reward for their fraudulent behavior and guarantee that they will be granted all future applications for branches, mergers, acquisitions, and additional holding company charters, expanding their markets." Here are some of the systemic regulatory problems we see that need to be addressed if the CRA is to have any credibility:

- The CRA was created at a time when there was no interstate banking, and even intrastate banking was limited in many states. Therefore, most lenders had very concentrated individual service areas. As several other commenters have been stating, the definition of the assessment area must be expanded to include the areas both local and across the country where banks and their affiliates now provide financial services, including any adjacent minority or low-and moderate-income areas. This is particularly important for small metropolitan areas where banks lack local retail offices but where they use correspondents, mortgage brokers, and direct marketing to secure deposits and provide a range of personal, residential, and commercial loan products.

- Regulators not only need to deny CRA credit for loan products that exploit rather than serve individuals and communities, but they need to penalize banks that engage in originating or supporting predatory loan products – products that fail to adequately underwrite the loan, that impose unreasonably high interest rates and/or other unreasonable terms and conditions, that are sold through deceptive marketing, or that otherwise pose unreasonable risks to the borrower. For decades, community organizations have challenged such predatory loans. This often included marketing that was targeted to minorities or to low- and moderate-income borrowers or practices that steered minorities and low- and moderate-income applicants to predatory loans.

The abandonment of minority and lower-income communities and borrowers to predatory subprime loans – either through the bank's own subprime products or by simply failing to provide sound alternatives – left these borrowers and the communities where they lived with growing foreclosures and massive blight by the late 1990s. Community organizations, civil rights groups, and fair housing groups raised red flags about the growing destructive impact of these loans a decade before the so-called experts claimed that no one could have foreseen what was coming. Rather than intervene, regulators defended these loan products and gave CRA credit to the lenders that infused them into minority and low- and moderate-income communities. This history provides a clear demonstration of the need to listen to local communities and impose CRA penalties for lending that exploits, rather than serves, communities.

- As part of this unwillingness to distinguish between servicing community needs and engaging in risky and predatory lending, the CRA examination process typically allows banks to include for credit in the lending test all lending by the banks' affiliates. In addition, in reviewing lending performance, the review process combines loans originated by the bank and its affiliates as well as any loans the bank has purchased (without making any distinctions between the two). Also, the review makes no distinction between the different types of loans and loan products. Under this process, banks get the same credit for exploiting minority and low- and moderate-income communities as they get for serving their legitimate needs. Among other things, this means that the creative banks that strive to meet community needs don't get rated any higher than the banks that exploit minority and low- and moderate-income communities. Therefore, there is no advantage to taking the CRA seriously.

- The CRA evaluation process is based on comparing the subject bank to its "peers", and to the overall market. This singular approach can lead to lowering the bar and assisting poor performing banks to pass their exams. For minority and lower-income communities the entire market often fails to serve their needs. In that case, this approach simply allows all the lenders to pass their CRA lending examinations while not serving these communities.

  This is especially true in the smaller MSAs and rural markets that IPA primarily serves. We have seen how the regulators set a bar for minimally acceptable lending that may represent only a handful of loans. The bank can even meet this low standard simply by purchasing loans made by another lender – generally loans that are already seasoned and provide extremely low risks – and loans that can be sold again when not needed. In other cases, the bank can become a correspondent of a larger institution, allowing the other institution to actually underwrite its loans. While this may allow a creative lender to expand its range of products, in other cases this allows some lenders to achieve passing CRA ratings without even learning how to make some of the most basic loans. In this way, the regulators are literally coaching the banks on how to game the system rather than challenging the banks to assess local needs and develop sound products to serve those needs. Rather than holding banks to the highest standards, the process seems to encourage a race to the bottom.

- Failing to penalize banks for violating the fair lending laws and discriminating in their lending is a particularly troublesome issue with the current CRA examinations and ratings. Eight years ago, I testified before Congress in a CRA hearing about this particular issue. At that time, I submitted examples of major banks in different metropolitan areas that had literally eliminated minority markets from their assessment areas and yet had been given passing - and even "Outstanding" - CRA evaluations with the public CRA evaluation indicating that there was no evidence of discrimination.

Meanwhile the Department of Justice sued these same banks for denying credit to the very same communities that the lenders had specifically eliminated from their assessment areas. In another example, a bank that was a major mortgage lender in the nation was twice found liable for race discrimination, once by summary judgment (meaning that the court could not conceive of any legitimate defense that could be proffered for their actions). After these clear violations of the fair lending laws, the regulator gave the bank an "Outstanding" rating.

It is hard to imagine a more clear demonstration of the failure of the regulatory agencies to penalize the banks for discrimination even though taking account of evidence of violating the fair lending laws is required by the CRA regulations and examination process. At the hearing, one regulator defended the action by stating that it thought the lender had suffered enough in being found liable for its discrimination. Another regulator responding to the elimination of minority areas by one of the largest lenders in the Chicago MSA simply responded that while she could not think of a reason to give the lender a passing CRA grade, there must be one.

Now, years later, we are seeing a new set of these redlining discrimination claims and settlements by DOJ and the CFPB against banks that have systematically eliminated minority areas from their assessment areas or engaged in discrimination against minority markets and applicants – only to have been given passing CRA evaluations with statements in the public evaluation that there was no indication of any discriminatory activity. For the bank that had twice been found liable for discrimination, it was later found to have discriminated against Hispanic borrowers after it received its "Outstanding" rating and is also the subject of a CFPB settlement for abusive servicing practices.

The original CRA evaluation process had a separate factor for evaluating discrimination. That was eliminated and replaced by a simple note about taking discrimination into account. But while a few CRA evaluations do mention violations of the fair lending laws and even settlements with damages paid, the regulators still gave the banks a passing CRA ratings.

Today one of the most important consumer financial issues is the exploitation of lower-income and minority groups by payday lenders and title loan companies. It has been a critical issue for our organization for years. Still, we don't see CRA reports indicating a need for small dollar loans. When some lenders in our communities have developed what they market as small dollar loans, we have found that they have predatory features. Nonetheless, if history is any judge, we fully expect that the regulators will give them CRA credit for these programs.

- Even when substantial issues are raised and challenges are filed against a bank, few hearings are held and the issues often appear to be ignored altogether. We don't get an impartial assessment of our claims. We praise the work of organizations like the California Reinvestment Coalition that have found the resources to constantly monitor banking practices and work with local community groups, development organizations, counseling agencies, and business groups so that it they can raise substantial challenges to merger applications that fail to redress poor CRA performance. But, very few areas and very few local communities have the resources to engage in the difficult work of mounting such challenges.

Local groups tackling environment issues, housing segregation, the rebuilding of communities devastated and laid waste by the Great Recession, the economic distress of the growing economic divide, the treatment of our immigrant neighbors, and the economic exploitation of the most economically depressed people by payday and car title lenders hardly have the resources to continually monitor banking activities, document all critical issues, and develop reinvestment programs. Even if we could develop a reinvestment program we would then suffer the draconian disclosure, monitoring and reporting requirements of the absurdly named "CRA sunshine" regulations that punish organizations for working on reinvestment issues. We need a regulatory process that takes community reinvestment and lending discrimination seriously.

The response we received from the Comptroller for our 2010 challenge of two of the nation's largest banks provides a stunning example of why seeking to divert precious resources toward CRA comments and challenges is increasingly seen as a futile gesture. We developed a challenge supported by organizations from across the country and accompanied by comments that provided extensive details of the problems and issues that resulted in the challenge.

The Comptroller responded that if we wanted to challenge such banks, we had to wait for a covered application (meaning we had to spend our limited resources tracking all such applications all over the country hoping to find an application that covered one of these banks for an application in one of our communities. The Comptroller said that it would have the banks place our comments in their public CRA files stating that the Comptroller would "consider the issues you raised in your letter during out next CRA examination." Yet a year later, the Comptroller issued a second passing CRA rating to the largest of these banks and never even contacted those of us who had raised these issues.

Under these conditions, the regulators have become an obstacle to helping meet the credit needs of our communities and protecting people from discriminatory and abusive lending. Moreover, the banks that do seek to serve local community needs get nothing from the CRA as virtually all lenders get passing grades. Indeed, like us, they get penalized for engaging in a process that requires administrative time and resources without any benefit. Unless the regulatory agencies drastically improve their commitment to the goals of the CRA and change their process and enforcement efforts, the law may well devolve into a pointless bureaucratic diversion rather than a mechanism for consumer protection.