



**The Housing
Research & Advocacy
Center**

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April 5, 2004

Docker No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW,
Washington 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington DC 20429

Regulation Comments, Attention: No. 2004-4
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington DC 20552

Dear Officials of Federal Bank and Thrift Agencies:

As a member of the National Community Reinvestment Coalition, **The Housing Research & Advocacy Center** urges you to **withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations.**

The Housing Research and Advocacy Center has been involved with fair lending issues for the last twenty (20) years. The lack of credit or toxic credit has an enormous impact upon historically underserved neighborhoods in Cleveland as well as throughout the State of Ohio. Our Agency has documented racial disparity trends in lending for a number of years and has challenged mergers in the past. In addition to analytical analysis and GIS work, the Housing Center has been involved in fair lending testing for the past two (2) years. We have recently received a new Fair Housing Initiatives Program (FHIP) enforcement grant and will continue to focus our attention on testing lending institutions for equal access to credit.

Greater Cleveland has benefited tremendously from the CRA through agreements with local lenders. The CRA has pumped billions of dollars in private capital into historically underserved neighborhoods in the City of Cleveland. The following savings institutions in Northeast Ohio would no longer be subject to CRA examinations: North Akron Savings Bank; Century Bank; First Place Bank; Home Savings Bank; Deep Green Bank; Northern Savings & Loan Co.; First Federal Savings & Loan of Lorain.

In addition County Bank of Rehoboth Delaware - \$256 million in assets - sophisticated enough to do payday lending all over the country; too small to comply with the CRA investment and service tests, small lenders can have an enormous impact on services in low and moderate-income neighborhoods. Ohio has seen an explosion of "payday" lenders and historically underserved financial markets. The failure of regulators to properly review small lenders who are providing their assets to payday lenders who exploit low income neighborhoods.

CRA has been instrumental in **increasing** access to homeownership, **boosting** economic development, and **expanding small businesses** in the nation's **minority, immigrant, and low- and moderate-income** communities. Your proposed changes **are** contrary to the CRA statute because they **will** halt the progress made in **community reinvestment**.

The proposed CRA changes **will** thwart the **Administration's** goals of improving the economic status of **immigrants** and creating 5.5 million new **minority** homeowners by the end of the decade. Instead, the **proposed** CRA changes would **facilitate** predatory **lending** and reduce the ability of the general public to hold **financial institutions** accountable for compliance **with** consumer protection laws.

The proposed changes include three major demerits: 1) provide **streamlined** and **cursory** exams for banks with assets between **\$250 million and \$500 million**; 2) **establish a weak predatory lending compliance standard** under CRA; and 3) expand data collection **and reporting** for small business and home lending. The **beneficial impacts** of the third proposal **are** overwhelmed by the **damage imposed by the first two proposals**. In addition, the federal banking agencies did not update procedures regarding **affiliates** and **assessment** areas in their proposal, and **thus missed** a vital **opportunity** to continue CRA's effectiveness.

Streamlined and Cursory Exams. Under the current CRA regulations, **large banks** with **assets** of at least \$250 million **are** rated by **performance evaluations** that **scrutinize their level of lending**, investing, and services to low- and moderate-income communities. The proposed **changes will** eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between **\$250 and \$500 million**. The **proposed changes would** reduce the rigor of CRA exams for **1,111 banks** that account for **more than \$387 billion** in assets.

The elimination of **the investment and service tests** for **more than 1,100 banks** translates into **considerably less** access to banking services and capital for underserved communities. For example, these banks would **no longer** be held accountable under CRA exams for **investing in Low Income Housing Tax Credits**, which have been a **major source** of affordable rental housing needed by large numbers of **immigrants and lower income** segments of the **minority** population. **Likewise**, the **banks would** no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or **debit card** services. **Thus**, the effectiveness of the **Administration's** housing and community development programs would be diminished. Moreover, the federal bank agencies **will fail** to enforce CRA's statutory requirement that **banks** have a continuing and **affirmative** obligation to serve **credit and deposit** needs **if** they eliminate **the investment and service test** for a large subset of **depository** institutions.

Predatory Lending Standard. The proposed CRA changes contain an anti-predatory **screen** that will **actually** perpetuate abusive **lending**. The proposed **standard states** that loans based on the foreclosure value of the collateral, **instead** of the ability of the borrower to repay, **can result in downgrades in CRA ratings**. The **asset-based** standard falls short because it **will not** cover many instances of predatory lending. For example, abusive lending would **not** result in lower CRA ratings when it **strips** equity without leading to **delinquency** or foreclosure. In other words, borrowers can **have the necessary income** to afford **monthly payments**, but they **are still losing** wealth as a result of a lender's excessive fees or unnecessary products.

CRA exams **will allow** abusive lending if they contain the proposed anti-predatory **standard** that does not address the problems of the **packing of fees** into mortgage loans, **high prepayment penalties**, loan **flipping**, **mandatory** arbitration, and other **numerous abuses**. **Rigorous fair** lending audits and **severe penalties** on CRA exam for **abusive lending** are necessary in order to ensure that the new **minority homeowners** served by the **Administration** are protected, but the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory standard must apply to all **loans** made by the bank and all of its affiliates, not just real-estate secured **loans** issued by the bank in its 'assessment area' as proposed by the agencies. By shielding **banks** from the consequences of abusive lending, the proposed **standard will frustrate** CRA's statutory requirement that **banks** serve low- and moderate-income communities consistent with **safety and soundness**.

Enhanced data disclosure. The federal agencies propose that **they** will publicly report the **specific census tract** location of small businesses receiving loans in addition to the current items in the CRA small business **data** for each **depository institution**. This will **improve the ability** of the general public to determine **if banks are** serving **traditionally neglected neighborhoods** with small business loans. **Also** the regulators **propose separately**

reporting purchases from loan originations on CRA exams and separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

The positive aspects of the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use the new data to provide less weight on CRA exams to high cost loans than prime loans and assign less weight for purchases than loan originations.

Missed Opportunity to Update Exam Procedures: The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams. Lastly, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches. Many banks make considerable portions of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams.

The proposed changes to CRA will directly undercut the Administration's emphasis on minority homeownership and immigrant access to jobs and banking services. The proposals regarding streamlined exams and the anti-predatory lending standard threaten CRA's statutory purpose of the safe and sound provision of credit and deposit services. The proposed data enhancements would become much more meaningful if the agencies update procedures regarding assessment areas, affiliates, and the treatment of high cost loans and purchases on CRA exams. CRA is simply a law that makes capitalism work for all Americans. CRA is too vital to be gutted by harmful regulatory changes and neglect. Thank you for your attention to this critical matter.

Sincerely,



Charles H. Bromley, Director
The Housing Research & Advocacy Center

cc:

National Community Reinvestment Coalition
President George W. Bush
Treasury Secretary John W. Snow