August 26, 2010

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RIN 3064–AD60

Office of the Comptroller of the Currency
250 E Street, SW
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Docket ID OCC–2010–0011

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R–1386

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Docket ID OTS–2010–0019

Dear Sir or Madam,

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the FDIC, FRB, OCC, and OTS's (the agencies) request for comment regarding the modernization of Community Reinvestment Act (CRA) regulations. We commend the agencies for considering methods by which CRA can be strengthened. The last time that the CRA regulations were reviewed and amended in their entirety was in 1995. Unfortunately, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income (LMI) neighborhoods will be essential. Accordingly, we welcome the opportunity to provide our thoughts on how the implementation of CRA can be further improved.

In order to relay our suggestions in an organized manner, we have split up our comments into two sections. The first section outlines our suggestions that go beyond the questions posed by the agencies. The second section addresses the specific questions posed in the notice.

ORIGINATION OF UNSUSTAINABLE LOANS

A pattern or practice of originating unsustainable loans should negatively impact a bank's CRA rating. One issue of concern with CRA as it exists today is that regulators are charged with reviewing the amount of lending or services provided by an institution, without explicit guidance regarding the need to review the terms and conditions of these products. The CRA regulators should work closely with the newly created Bureau of Consumer Financial Protection (the

"Bureau") to identify products and services that positively or negatively impact an institution's CRA rating. For example, if a bank's lending or services in an LMI community were bolstered by products that were predatory or otherwise deemed harmful by the Bureau, the bank should be denied CRA credit for these activities. A loan to a multifamily building in an LMI community with a debt service that would require the current LMI tenants be displaced should not be included in the totals for LMI or community development lending. And, institutions should not be permitted to allow their national charters or usury limits to be used to evade state regulations on check-cashers or payday lenders. CRA should be revised to give regulators discretion to consider whether a bank is engaged in activities that negatively impact LMI consumers and whether such activities should adversely affect an institution's CRA rating. In this way, CRA can be used as an effective tool to combat the proliferation of harmful anti-consumer practices. CSBS also believes more CRA consideration should be given to a bank for providing credit enhancements or micro lending and technical assistance where performance context indicates that these are unmet community needs. While today these activities are noted in the section on Innovative and Flexible Lending Practices, it is often difficult for an institution or the public to determine how much weight these activities were given in the rating.

NON-TRADITIONAL SERVICES

CRA should be revised to ensure that bank activities that go beyond traditional lending receive appropriate credit. As an example, a bank should receive favorable consideration for working closely with non-profits to assist borrowers that the bank has declined. This service can be an invaluable tool for expanding the availability of credit in LMI and small business communities. However, such referral programs need to be robust; examiners should carefully consider the structure and functioning of referral programs before granting CRA credit.

Community development organizations have needs beyond financial ones. And yet, currently, CRA community development service must be financial in nature. We believe that community development service should not be construed in this limited manner, but rather include all activities that support the mission of community development. Some examples could include: a banker volunteering to help a community development organization upgrade its website; a banker participating in an LMI neighborhood watch program that is trying to reduce crime; or a banker helping to physically rehabilitate a neighborhood with sweat equity.

However, community development service done by an employee or director as a private effort should not be credited unless the service can be shown to be explicitly supported by or connected to the financial institution's community development efforts. As a practical matter, much volunteer work, such as nonprofit board membership, is officially done as a private individual, even when the work is done with close ties to the individual's employer. Therefore, financial institutions looking to receive community development service credit should demonstrate that the employee's involvement is connected to the financial institution's activities. The connection possibilities are many and may include the financial institution supporting the employee's involvement through paid time off for the volunteer work or the activity being part of the financial institution's broader working relationship with the nonprofit. In this way, financial institutions will not simply survey their employees and receive credit for what is truly a personal commitment. On the other hand, non-financial support for community development, which is frequently needed, would be encouraged.

We have outlined our feedback to certain questions posed in the notice below:

Geographic Coverage: Another weakness of the current CRA is that it does not hold institutions accountable for actions they perform outside of their assessment area. Providing loans or services that prey on unbanked or under-banked populations should not be ignored simply because such activities take place outside of an institution's assessment area.

We also believe the agencies should re-consider how limited purpose and wholesale institutions should be allowed to draw their assessment areas. It seems illogical for these institutions' assessment areas to cover their immediate geographic areas, simply because the institution has an office in that area. CRA should allow a wholesale bank to establish an assessment area based on community needs—not simply where its offices are located.

CRA performance tests, asset thresholds and designations:
A new community development test should be created for large financial institutions that looks at all community development activities (lending, investments, grants and services) in one test, in the same way that intermediate small and wholesale institutions are evaluated today. By creating such a test, regulators would eliminate a large institution's ability to leverage its mortgage and small business lending against its community development lending. CSBS also recommends that within the community development test (for large, intermediate small and wholesale institutions) grants and investments be evaluated separately, as the size of investments dwarfs the size of grants. Large institutions' CRA tests would therefore include a community development test, a retail lending test, and a retail services test. The investment test that currently exists today for large institutions would be subsumed by the new community development test.

Regarding asset thresholds, existing federal CRA regulations define a large bank as having assets over $1 billion (adjusted annually, currently at $1.098 billion). These institutions are often, in practice, examined every 4 to 5 years if they have previously achieved a CRA rating of "Satisfactory" or "Outstanding". However, as the banking industry has further consolidated, the $1 billion asset threshold has become increasingly antiquated. We encourage the federal regulators to continue to review the asset threshold levels and to make sure that the levels reflect proper risk scoping. It seems appropriate for the federal regulators to consider developing a new system of CRA examination for the truly large money centers, whose business practices differ substantially from smaller institutions by virtue of sheer size and complexity.

Another test that needs reviewing is the strategic plan CRA option. The strategic plan should be re-cast so that an institution choosing this option would be free of the standard evaluation and instead be encouraged to create innovative programs. For example, one institution might choose to focus on financial literacy, rather than simply being another HMDA lender in a community. Another institution might focus on building infrastructure, providing technical assistance to non-profits in an area that does not have robust community groups. One institution might devote its efforts to homeownership—from pre-purchase counseling to lending to helping people stay in their homes. Banks would need to demonstrate community support for their plan and regulators would need to carefully vet this to ensure that a community's lending, service and investment needs were still being met and that the plan had enough merit and measurable goals.

Affiliate Activities: The agencies should require that affiliate lending be reviewed in CRA examinations. Under current CRA regulations, banks can structure their lending so that only their "good" loans are considered, while their "bad" loans can be shielded either by a subsidiary or an affiliated institution. This regulatory option for affiliate activities has essentially created a loophole for banks with multiple subsidiaries. All lending activities by affiliates of a bank should be made a mandatory part of the review of a bank's CRA performance.

Small business and consumer lending evaluations and data: From our perspective, especially as they relate to community development, letters of credit should count as loans.

CRA evaluations should not give credit to purchased loans and investments in evaluating lending and investment performance unless the financial institution can demonstrate that the purchased loans and investments provided needed liquidity to the marketplace.

Effect of evidence of discriminatory or other illegal credit practices on CRA Performance Evaluations: All substantive violations of consumer laws that harm consumers or the community, whether credit-based or not, should be considered under CRA. Actions that are considered unfair and deceptive under FTC Act, Section 5 should be considered under CRA as well. However, regulators should have the discretion to determine the weight given to violations of law based on the nature of the violations and impact on the community.

CRA disclosures and Performance Evaluations: CSBS urges the agencies to take advantage of technology and consider methods for creating transparency in the CRA process. For instance, it might benefit the community to build a central database of community comments for evaluations. The agencies might consider including a link on their websites allowing community comments to be submitted electronically whenever an institution is being examined for CRA.

Additionally, financial institutions could be required to post their CRA evaluations and ratings conspicuously on their websites to encourage public awareness of CRA performance and to provide at least an additional incentive for institutions to strive for better ratings.

We commend the agencies for taking the opportunity to consider how CRA can be strengthened, and we look forward to working with the agencies on CRA related matters.

Neil Milner

President and CEO