THE NATIONAL
DEVELOPMENT
COUNCIL

August 25, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: 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
Re: Docket No. R-1386

Robert E. Feldman
Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: RIN 3064-AD60

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
Attention OTS-2010-0019

Dear Sir or Madam:

Thank you for the opportunity to comment on and suggest improvements to the Community Reinvestment Act (CRA).

The National Development Council (NDC) was born out of the assassinations of Martin Luther King and Robert F Kennedy in 1968 and inspired by the work of those two great leaders. We are a national nonprofit organization dedicated to making economic opportunity available to all Americans and to creating jobs and stimulating investment in low income communities (LICs). For more than forty years we have been carrying out our mission and believe we have made a difference in the lives of many disadvantaged families. As a CDFI, a CDE, and an SBLC, we have supported and financed many key community development projects -- housing, neighborhood commercial revitalization, small businesses, community facilities, and more. These projects, at a total estimated cost of four billion dollars, have thus resulted in significant levels of reinvestment in many of the emerging and struggling communities that we have worked in nationwide.

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Since its enactment in 1977, CRA has been one of the primary forces in America enabling low-income communities to redevelop and renew themselves. CRA has created economic opportunity for countless Americans determined to lift themselves from poverty. CRA has led to the formation of positive and beneficial partnerships among LICs, the mission-driven financial intermediaries that serve the needs of LICs, and CRA-regulated institutions. CRA has also fostered the rise of capable and skilled community-friendly and thoughtful lenders within the community development sector. These Community Development Lender are usually housed within a Bank Community Development Corporation (CDC) or a nonprofit financial intermediary, which is often a Community Development Financial Institution (CDFI)

Unfortunately, as the nation and our economy have evolved and as the economic crisis has deepened, we believe that CRA has wandered from its mission and lost its focus. There are too many regulators, too many rules, and too much confusion within the CRA system, from the regulators to the banks, to the financial intermediaries, and to the LIC itself. CRA places too much emphasis on numbers and too little focus on impact and renewal. Banks have increasingly focused on only the numbers that count toward the rating, regardless of whether or not they are really addressing the needs of those communities. And, as dissatisfaction has mounted, CRA has been blamed for problems it had no role in creating, such as the sub-prime mortgage debacle whose root cause lies with less regulated institutions with no CRA obligation.

To better align CRA regulation with its original goals an purposes, we recommend:

- Expansion of CRA oversight to encompass types of financial institutions beyond those now covered;
- Adjustment of geographic coverage to allow CRA credit for investments with wider footprint to reach more LIC's;
- Strengthening community impact with effective incentives or penalties as appropriate and with more input and involvement from LIC's and their intermediary representatives.

The overarching goal of CRA is to enable LICs to renew themselves, and it is CRA's job to provide capital for that self-renewal. Community reinvestment that generates renewal includes financing for and investment in

- Housing for community residents, both home buyers and renters
- Business development, especially small business development, to provide all types of jobs for community residents, retail and commercial products and services for the community residents, and commercial and industrial real estate development to house these activities
- Community facilities for resident advancement and enrichment including education, medical care, social services, community activities, recreational activities, and the arts.

To achieve this goal while modernizing and simplifying CRA, we offer six recommendations for your consideration:

CRA should apply to non-depository institutions, not just banks.

Non-depository financial institutions such as insurance companies, investment banking firms and hedge funds, mortgage bankers, and credit card companies all receive revenue and make profits in Low Income Communities. While they may not accept cash deposits in these communities, they do accept cash premiums on a variety of insurance products, cash savings from LIC residents who invest into their retirement plans and other savings products, and collect interest on mortgage loans and credit card balances.

At the same time, these same firms, through their daily business operations, can have a significantly negative impact on LICs, the most salient example being the subprime mortgage debacle. Hedge funds package, buy, and sell subprime mortgages that destabilize mortgage markets, especially in vulnerable LICs, even if the bulk of the subprime mortgages were not made in LICs or to low income individuals. Insurance companies can make insurance more costly or less available in LICs. Credit card companies and mortgage lenders can destabilize credit availability in LICs through predatory lending strategies.

All these firms, through financial transactions, impact LICs positively and negatively, and it seems only fair and reasonable that such financial institutions share proportionate CRA responsibility.

Marshalling the combined financial resources of all these institutions and their brain power for re-investment into LICs could greatly enhance economic opportunity in America and increase competition among institutions that need CRA. And leveling the playing field among financial institutions and products will provide substantial new investment in LICs as well as more creative options for resolving the endemic problems of poverty and disinvestment.
In many banks, because CRA activities do not earn the same level of return as other financial products within the bank, CRA is viewed by senior management as an unfair cost levied on banks. Bank executives would be more enthusiastic, supportive, and competitive about CRA if everyone in the finance industry had the same obligations. Rebuilding communities would become more something we all want to participate in, and less a penalty on banks whose major differentiation from other financial institutions is that they accept cash deposits insured by the federal government.

CRA needs to cover underserved communities fairly.

As a result of bank consolidations over the last twenty years, there is a tremendous concentration of financial assets and CRA responsibility in major urban centers and suburban areas, especially in economically vibrant areas. Many small towns and rural areas and areas of slow growth where LICs are concentrated have few CRA options because few major banks remain in these areas. Those few banks that do remain often are small, closely held, family run banks that cannot take advantage of readily available CRA tools such as Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits (NMTC).

At the same time, giant global financial institutions (e.g., Goldman Sachs and American Express) that cover the nation with their financial products have microscopic CRA assessment areas (footprints) because they have acquired a tiny bank to process their banking transactions. As a result of this concentration of obligation in limited assessment areas, some underserved LICs that have the greatest need for CRA assistance (rural, small, and stagnant communities) have the least access to CRA resources.

To mitigate this obstacle to these underserved communities, banks and global financial institutions whose primary assessment areas are small or lie outside an underserved area should be encouraged to invest in these underserved areas, with full CRA credit for those activities.

CRA needs to be less a numbers game and more a flexible community reinvestment strategy focused on community impact.

A number of large national banks have outgrown any rational sense of what constitutes a local CRA Assessment Area. These banks have established sophisticated financial models for determining their CRA financial obligation. In part because CRA is viewed as an unfair cost levied on banks that is not shared by other financial institutions, banks determine the minimum investment necessary to meet their CRA obligation. This leads to short term, hyper-targeted spending tactics ("we need a LIHTC deal in this county or census tract") rather than a long term Community Reinvestment Strategy to rebuild a LIC in the bank's CRA footprint. Nonprofit intermediaries, such as NDC, who play major roles in helping banks to meet their CRA obligation by identifying community needs and the investments that will have positive community impact, find themselves chasing their tails. We are forced to identify projects here and there, without the opportunity to support or develop a comprehensive strategy for building economically viable communities. While some investment is occurring, it is a stop gap measure and community rebuilding is limited. And, because of this fragmentary approach, LICs are virtually no better off than they were before the investment. The impact of the investment is not part of the calculus for awarding CRA credit.

As a result of this hyper-targeted investment strategy, CRA Assessment Areas have become much like a jigsaw puzzle. Too often in a LIC, a project on one side of the street receives CRA credit, while the same project directly across the street fails to receive credit. Or, a CRA-eligible project that a bank was interested in last week is of no interest to a bank this week because the bank in the meantime had found an project that it deems easier to finance. Instead of this tic-tac-toe numbers game, CRA should be a tool that encourages and permits and awards credit to banks that invest into community development investment strategies and funds (such as LIHTC funds and other financing mechanisms) that truly impact a community and help to rebuild communities though CRA.

A case in point is the manner in which CRA regulations affect one of the most successful community reinvestment tools in America, the LIHTC program. Prior to the current economic crisis, the LIHTC market was large, with healthy competition. There were many investors, syndicators, and housing sponsors or developers. Capital flowed to all regions of the U.S.

One of the great equalizers in the market was the presence of several large national LIHTC funds sponsored by respected nonprofit financial intermediaries including LISC, Enterprise, and NDC and several profit-motivated national funds. These national players made certain all regions of the nation, including rural and small metropolitan areas, and regions with few large commercial banks were able to compete for their share of LIHTC credits.

These national funds offer several advantages to banks, large and small, and LICs:

- The national funds offer risk mitigation through an established network of origination, and proven underwriting and asset management systems that have withstood the test of time and by diversifying regional risk with investments across regional lines (NDC's funds operate in 26 states).
- Projects across the nation are able to effectively compete for LIHTC investments including rural areas and inner cities (35% of NDC's portfolio is invested in rural communities).
- The national funds perform very well with a foreclosure rate well under 0.1% (NDC's fund has never had a foreclosure in its fifteen-year history).
- Because the system worked well, investment was high, yields to investors were moderate, and a high level of investment proceeds flowed to the projects ensuring a high quality housing product. In a sentence, the program was meeting its mission of improving Low Income Communities.

Regional and local banks are natural investors into LIHTC funds, but CRA regulations are now acting as an impediment to investment. Because CRA has become so rule-oriented, regional and local banks cannot invest into national LIHTC funds or, if they do, they will not receive significant CRA credit even if the national fund has a significant number of projects in the bank's CRA assessment area. And regional and local banks that traditionally do not have depth of experience in underwriting LIHTC investments and in asset-managing those investments would be able to access the investment experience and management capacities of the national funds to diversify and mitigate their risk.

CRA needs to reward outstanding performance and to punish poor performance.

Many banks do an outstanding job meeting their CRA obligation and go beyond the bare minimum. These banks receive little reward for going the extra mile. While they may receive an Outstanding rating, in the real world, this rating translates only into bragging rights.
On the other hand, federal regulators have almost no leverage to punish poor performance under CRA, except to act as a hindrance when a financial institution needs approval for an acquisition or merger with another bank. There are few, if any regulatory penalties levied against the poorly performing bank and virtually no financial penalties or recourse for poor performance.
CRA ratings should have more financial and regulatory teeth. Incentives and penalties need to be incorporated into CRA performance ratings.

For example, excellent banks could receive a credit against their federal taxes or FDIC insurance premiums. Additionally, for banks receiving a Satisfactory Rating or better, CRA credit could be awarded for an investment into a national LIHTC fund or NMTC project that serves a region that includes any of a bank's assessment areas.

Also, banks that fail to receive a Satisfactory Rating or better should be penalized financially. A fine could be levied against the poorly performing bank requiring a portion of corporate earnings to be deposited into a pool of funds available for award to nonprofit community development organizations in the bank's CRA footprint. Additionally, like Return on Asset rankings, banks should be numerically ranked on their CRA obligation, and the lowest ranking banks should face additional regulatory and financial penalties.

CRA needs to attack the root causes of disinvestment and to encourage collaboration with LICs.

Disinvestment in LICs on a large scale will end only when LICs have the tools and resources to make economic opportunity available to all. Many banks meet their CRA obligation simply by purchasing already booked mortgages from another institution or by having a large home mortgage origination business that originates loans that are bundled and sold off into a secondary market, leaving the bank without a true investment or reinvestment in the community. While technically compliant with CRA, these banks are not part of the community and are not part of the solution.

LICs need more than home mortgages because not every LIC family is ready to own a home. LICs also need rental housing, jobs, social services, access to educational, medical, and recreational facilities and services, clean air and streets and lots, as well as access to retail and commercial goods and services.

CRA should encourage banks to attack the root causes of disinvestment and poverty by working with communities and nonprofits that are working to create economic opportunity for residents of a distressed community. CRA should be a tool that encourages banks to "think outside the box" and to develop new and better techniques and strategies to end disinvestment. For example, credit enhancements that support community development financing, including guarantees and letters of credit, deserve similar consideration as equivalent CRA qualifying loans or investments.

CRA needs to be uniformly applied

Each regulated financial institution should be uniformly measured against the same CRA standard as every other financial institution. Within the bank regulation industry, CRA regulations and evaluations are not uniformly applied. Different regulators interpret the regulations differently. Even within the same regulator, CRA regulations are applied unevenly, from region to region. Uneven regulation results in unfair advantages to some banks and in lost opportunities in LICs. What one bank can do to attack disinvestment for CRA credit, another bank cannot. Rumors abound, uncertainly prevails, and rather than meeting CRA through a bold new strategy, banks default to the stale and ineffective methods of meeting CRA, originating or buying home mortgages. The CRA-regulated industry has become fragmented and fractionalized, while the regulators are inconsistent in applying the regulations, leading to dissatisfaction within the whole CRA system.

America can be on the threshold of a new and dynamic era of community renewal and economic opportunity for all. Thank you for the opportunity to bringing these thoughts to you.

Very truly yours,

Robert W. Davenport
President

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