COMMUNITY REINVESTMENT ACT REGULATION HEARINGS - COMMENTS

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My comments are anonymous because I work for a financial institution and might lose my job over some of these comments. As an insider, I see areas where the intent of the Community Reinvestment Act ("CRA") is not followed through on or hurt by the regulations or is circumvented by bank practices.

GEOGRAPHIC COVERAGE

Deposit Based CRA Assessment Areas

The CRA was passed in 1977; major changes were made by the basic regulations passed in 1995; and additional changes have been made by subsequent amendments. It has been 15 years since the basic regulations were passed, and the banking industry and technology have undergone substantial changes since the original passage of the CRA and the 1995 basic regulations. It is now time to bring the CRA and related regulations fully up to date to reflect the current banking environment and current technology.

Back in 1977 when the CRA was first passed, banks branches generally drew deposits from institutions, businesses, and individuals relatively close to the branch locations. The key concept behind the CRA was that banks should be required to serve the communities in which they did business, and I believe that most certainly included communities from which they obtained deposits. Bank regulators generally thought it was appropriate then that banks define their CRA Performance Evaluation Assessment Areas ("AA's") as the areas around their branches (generally towns, cities or counties). In making CRA Performance Evaluations, regulators wanted to be sure the banks were serving these AA's (making CRA qualified loans and investments and providing CRA qualified services) without any redlining. When regulators came in to conduct CRA Performance Evaluations (generally once every two to five years), they evaluated how well the banks were serving their AA's.

With the advent of electronic banking, many banks now draw deposits from all over the United States, but the regulations still only require they provide qualified CRA loans, investments, and services to the defined AA's around their branches. As a result, the original intent of the CRA - that banks should be required to serve the communities in which they do business (including communities from which they obtain deposits) - is no longer being served in all instances. Although providing CRA qualified services (required under the CRA) may continue to be limited to the areas around bank offices and branches where there are bank personnel present, the required areas in which a bank must provide loans and investments should be expanded to include areas where a bank has significant amounts of deposits outside its current AA's. Previously, technology and records may not have permitted banks to aggregate deposits by county and state of source, but with current technology and regulations, banks are required to keep accurate records showing the address for each depositor. Banks should be required to include a public report (similar to the Summary of Deposits Report by branch now required annually and publicly available) showing their total deposits by county and state based on the addresses of the depositors.

Some specific examples of large banks drawing deposits from all over the United States but with AA's that only cover the limited areas around their head offices or fewer than four branch locations (with the result that the AA's probably represent less than 25% of deposits by depositor addresses) are the following (Total Asset figures as of 3-31-10):

Goldman Sachs Bank USA – This bank has three full service brick and mortar branches – one in New York, New York, one in Dallas, Texas, and one in Salt Lake City, Utah. This very large bank has over $89 billion in total assets. Its AA has not yet been defined publicly in a CRA Performance Evaluation, but will likely include only the areas around its three branches. Those AA's probably account for less than 25% of its deposits by depositor addresses.

State Street Bank and Trust Company – This bank has only one domestic branch, in Boston, Massachusetts. It has over $149 billion in total assets. The bank defines its AA's as the cities of Boston and Quincy, Massachusetts. Those AA's probably accounts for less than 25% of its deposits by depositor addresses.

ING Bank, fsb – This bank has over $91 billion in total assets. ING Bank has no branches, but it is headquartered in Wilmington, Delaware. It defines its AA as the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area. That AA probably accounts for less than 15% of its deposits by depositor addresses.

Morgan Stanley Bank, National Association – This bank has over $72 billion in total assets. It has one domestic branch, in Salt Lake City, Utah. Its AA is defined as Salt Lake County, Utah. That AA probably accounts for less than 5% of its deposits by depositor addresses.

E*Trade Bank – This bank has two full service cyber branches in Arlington, Virginia. It has over $44 billion in total assets. It defines its AA as the Washington DC-VA-MD-WV Metropolitan Area. That AA probably accounts for less than 15% of its deposits by depositor addresses.

Discover Bank – This bank has one full service brick and mortar branch in Delaware. It has over $63 billion in assets. In its last publicly available CRA Performance Evaluation, it defined its AA as only in Delaware. That area probably accounts for only 5% of its deposits by depositor addresses.

Ally Bank – a subsidiary of GMAC – This bank has one full service brick and mortar branch in Midvale, Utah. It has over $55 billion in assets. Its AA's are only in the state of Utah. Those areas probably account for less than 10% of its deposits by depositor addresses.

It is proposed that all "Large Banks" (as defined under CRA regulations and adjusted annually for inflation– currently defined as having over $1.098 billion in assets at the end of each the last two years) with a significant amount of their deposits (over 25%) coming from depositor addresses outside their defined AA's be required to make qualified CRA loans and investments in each state outside of their defined AA's where their deposits (based on the addresses of their depositors) exceed $250 million. **This would result in a better alignment of banks serving the communities from which they obtain deposits.**

CRA Investments by Large Banks Having Significant Deposit Shares in Rural Counties

Many rural or less populated counties have difficulty finding banks to make qualified CRA investments in these counties. The "Small Banks" (currently defined as banks having less than $274MM of assets at the end of each of the last two years) in these counties have no requirement under CRA regulations to make qualified CRA investments, and the "Large Banks" focus their attention on qualified CRA investments in more highly populated urban counties where they have larger deposits. When the regulators do their CRA Performance Evaluations for "Large Banks", they give much greater attention and weight to these urban counties where a "Full Scope" evaluation is done as opposed to the "Limited Scope" evaluation for the less populated rural counties. The regulators should take into account the percentage of a county's deposits held by a "Large Bank" in these less populated rural counties. The regulators should do a "Full Scope" evaluation of a "Large Bank" holding more than 15% of the deposits in any of these less populated rural counties in a given state and weight that performance for these rural counties in such state as much as they do the urban counties. See the comments below under **RATINGS AND INCENTIVES** for the incentives to serve these rural counties and the penalties for failing to serve them.

For example, based on the June 30, 2009, Deposit Market Share Report for some counties in California, this might include Sierra County, where Wells Fargo Bank has a 49% market share; Colusa County, where Wells Fargo Bank has a 29% market share and Umpqua Bank has a 32% market share; and Amador County where El Dorado Savings has a 26% market share and Wells Fargo Bank has a 20% market share. Even though the total deposits in these three counties combined in California only represent less than 1% of Wells Fargo Bank's deposits in California, Wells Fargo Bank is an important bank in these three counties. However, Wells Fargo Bank made no or very limited CRA investments in these counties in its last CRA Performance Evaluation cycle (10-1-2004 to 9-30-2008).

The substantial market share of a "Large Bank" holding more than 15% of the deposits in a given county should result in a requirement that the bank make meaningful qualified CRA investments in that county. Otherwise, it may be that no bank will make a qualified CRA investment in that county.

CRA DISCLOSURES AND PERFORMANCE EVALUATIONS

CRA Disclosure Requirements

Some banks fill their need to make "CRA Investments" by loading up on mortgage backed securities (MBS) that have underlying mortgages in low income neighborhoods just before the regulators come in to do their CRA Performance Evaluation. Once the exam is over, the bank sells its MBS to another bank that is about to have its CRA exam. Thus, the same mortgage is passed around in a "daisy chain", and few additional mortgages are actually created. This practice could be halted by requiring banks to determine their monthly average outstanding qualified MBS during the entire CRA Performance Evaluation cycle, and that average would be used to determine if they are making an appropriate level of CRA Investments. Although this proposal would deal with the "daisy chain" problem, a more fundamental issue is the question why MBS should be counted as qualified CRA Investments in the first place as these instruments are typically guaranteed by a government sponsored entity such as Ginnie Mae, and other individual and institutional investors will purchase these MBS. The CRA was designed to encourage banks to make investments that individuals and institutional investors would not generally make.

Another practice of some banks is to buy MBS and then securitize and sell them so the bank is no longer at risk for the MBS. This practice could also be halted by requiring banks to determine their monthly average outstanding qualified MBS for which they are at risk during the entire CRA Performance Evaluation cycle, and that average would be used to determine if they are making an appropriate level of CRA Investments.

Risk Weighting for Investments in Low Income Housing Tax Credit Funds

Some banks are reluctant to invest in Low Income Housing Tax Credit projects or funds, which are qualified CRA investments, because these investments do not typically carry S&P or Moody's ratings and thus fall into a category where the risk weighting factor (to determine adequacy of a bank's Tier 1 Capital) could give a result that the dollar risk would be equal to the amount invested. However, the Office of the Comptroller of the Currency in one of its publications in September of 2008 stated the following about these investments: "Due to market conditions, yields for tax credits are up, but the risks associated with **these low-risk investments** are unchanged" (emphasis added). The foreclosure rate for these types of investments, even in these difficult economic times, has been less than 0.5%, which is lower than any other real estate class. Thus, the regulators should specifically designate these types of investments as having a lower risk-weighting (e.g., say equal to that of a BB or BBB rated security, if they carry no actual rating) as long as the foreclosure rate remains so low.

Timeliness of CRA Performance Evaluation Reports

CRA Performance Evaluations (PE's) for each bank are generally done once every two to five years by regulators, and, by regulation, these PE's are posted for the public on the regulator's website. When these PE's are completed, it sometimes takes over six months (and sometimes over one year) before the PE's are made public on the website. With today's technology, it should not take this long. Examples from two of the regulators just for some banks with branches in California are noted below:

Report Date	Release Date	Delay (in months)	Regulator	Bank Name
5/19/2008	December 2008	7	FDIC	Redding Bank of Commerce
11/12/2008	June 2009	7	FDIC	Plumas Bank
5/5/2008	December 2008	7	FDIC	California Bank & Trust
12/6/2007	December 2008	12	FDIC	Amalgamated Bank
12/3/2007	August 2008	8	FDIC	Umpqua Bank
1/7/2008	May 2009	16	OTS	Los Padres Bank
11/2/2007	April 2009	17	OTS	Fullerton Community Bank
11/2/2007	March 2009	16	OTS	Universal Bank

It should be a requirement that the CRA Performance Evaluations be made public on the regulator's website within 6 months of the Report Date

RATINGS AND INCENTIVES

Rating Structure

The current overall rating structure has only four rating categories and does not provide sufficient distinctions in performance. A bank rated overall "Satisfactory" could be just short of an "Outstanding" rating or just barely above a "Needs to Improve" rating. In each category overall and in each state, AA, or multi-state AA (e.g., for "Large Banks" - Lending, Investments, and Services Tests; and for "Intermediate Small Banks" - Lending and Community Development Tests) a rating on a 100 point scale should be given. More rating categories should be available (e.g., for an "Outstanding" rating a score of 91-100, for a "Very High Satisfactory" rating a score of 81-90, for a "High Satisfactory" rating a score of 71-80, for a "Satisfactory" rating a score of 61-70, for a "Low Satisfactory" rating a score of 51-60, for a "Needs to Improve" rating a score of 31-50, and for a "Substantial Noncompliance" rating a score of 0-30. Then, for the overall score and in each state, AA, or a multi-state AA, a bank should be rated no higher than one level above its lowest rating in any of its categories. Because the Intermediate Small Bank Community Development Test has two parts (Community Development Loans and Community Development Investments), the seven rating categories above should be used for each part with the overall Community Development rating being no higher than one level above the lowest rating on any one part.

Incentives

If a bank receives an overall rating in one of the two lowest categories of the seven categories listed above, then it should be required to submit a public remediation plan with a new CRA Performance Evaluation being conducted one year later. If no improvement into one of the top five categories occurs, then the bank should be subject to closure or forced management changes.

THE DODD-FRANK ACT

Under the Dodd-Frank Act, except for certain permitted activities, a "banking entity" cannot acquire any equity interest in a private equity fund. When the regulations implementing this measure are promulgated, it should be made clear that qualified CRA equity investments by banks are permitted activities.