

THE FINANCIAL SERVICES ROUNDTABLE



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EXECUTIVE DIRECTOR AND
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Communications Division
Public Information Room, Mailstop
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219
Attention: Docket No. 04-06

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention Docket No. 2004-04

Ms. Jennifer J. Johnson
Secretary
1-5
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551
Docket No. R-1181

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Amendments to the Community Reinvestment Act Regulations

Dear Sir or Madam:

The Financial Services Roundtable (the "Roundtable")¹ appreciates the opportunity to comment on the proposed amendments to the Community Reinvestment Act of 1977 ("CRA") issued by Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System (the "Board"), Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "agencies").

Background

The agencies are proposing to amend the definition of "small institution" under CRA to mean an institution with total assets of less than \$500 million, without

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for \$18.3 trillion in managed assets, \$678 billion in revenue, and 2.1 million jobs.

regard to any holding company assets. The agencies are also proposing to amend the regulations to provide explicitly that an institution's CRA evaluation will be adversely affected by evidence of specified discriminatory, illegal, or abusive practices by the institution or by an affiliate whose loans were considered in the evaluation as part of the institution's own CRA record.

The member companies of the Roundtable support the goal of CRA, which is meeting the credit needs of all communities. We also firmly support the objectives of the CRA regulations which are; (1) emphasizing in examinations an institution's actual performance in, rather than its process for, addressing CRA responsibilities; (2) promoting consistency in evaluations; and (3) eliminating unnecessary burden.

We believe that this proposal fails to achieve these goals. Some two years after the advanced notice of proposed rulemaking ("ANPR") was first published, and almost ten years after the regulations were adopted, the proposed rule does not take substantive action to update the CRA regulations.

The Roundtable offers the following recommendations and comments:

- The agencies should re-evaluate the comments received during the ANPR process and make further recommendations to update CRA.
- We do not support including predatory lending issues in CRA examinations. Our member companies believe this information is repetitive and unnecessary. These issues are already taken into account in fair lending examinations and other contexts.

The Roundtable Believes Further Regulatory Action is Necessary

The current CRA regulations were adopted in 1995. In July 2001, the agencies issued an ANPR for CRA. Hundreds of commentators, including the Roundtable, offered myriad suggestions on how CRA could be improved. The majority of these recommendations were not included in the proposed rule. Instead, the agencies have developed a proposal that is limited in scope and does not bolster the CRA regulations.

Although the agencies have stated that some of these issues may be raised through additional interpretations, guidance and examiner training, the Roundtable believes that further regulatory action is needed and that the following recommendations should be included in the proposed rule in order to enhance the goals of CRA.

1. *Broader definitions of limited purpose and wholesale institutions*

The Roundtable believes that the CRA regulations could be improved by broadening the definitions of limited purpose and wholesale institutions, thereby expanding the availability to institutions of the community development test. This would give institutions greater flexibility under the regulations to demonstrate how they are helping to meet the credit needs of their entire communities.

In general, the definition should provide the agencies with adequate flexibility to acknowledge the evolution of the marketplace. In particular, the definition should be expanded to cover financial institutions that exclusively employ alternative, non-branch delivery systems as their primary channel of distribution for products and services. For example, in recent years, several "non-traditional" financial institutions have been launched that rely exclusively upon telephones, the Internet, or direct mail to serve and correspond with their respective customers. These branchless institutions should be accorded the same flexibility in their CRA compliance as other institutions that have traditionally been designated as a limited purpose or wholesale institution.

2. *Lending Test*

The Roundtable recommends that letters of credit that meet the regulatory definitions of lending for community development or small business should be included in the assessment of a bank's lending activities. Letters of credit are generally required enhancements for bonds that finance affordable housing and economic development projects and thus generally increase the level of funds available for this purpose. Issuers of letters of credit conduct the same analysis that lenders conduct and have the same credit exposure as lenders. Letters of credit are treated as loans for other regulatory purposes, such as capital requirements and loans-to-one-borrower limitations. Because letters of credit represent an important community credit need, they should be formally defined as a form of credit in the CRA regulations. Letters of credit increase the amount of low cost credit available in communities. Through bank guarantees, many institutions are able to make community development financing less expensive to the communities that need it most.

3. *Service Test - Alternate Delivery Systems and clarification of qualified services*

The Roundtable believes that the evaluation of services should consider not only the delivery method and type of service, but also the effectiveness of the delivery method, i.e., the extent to which low- and moderate- income persons actually use the services. For example, many of our member companies contend that ATMs

are frequently used and are an effective way to provide services in low- and moderate-income communities. Therefore, institutions should receive consideration under the service test for their ATMs in these locations.

The Roundtable also believes that the service test should provide more consideration for flexible and innovative deposit accounts. These products enable low- and moderate- income people and communities who may currently be underserved by financial institutions to establish banking relationships, helping them to increase savings and qualify for future credit.

In addition, the Roundtable suggests that the definition of services “related to the provision of financial services” be clarified to explicitly include the provision of volunteer services of a professional nature to community groups, charities and non-profits. These services can help non-profits become more efficient, improve their fiscal management, and increase service levels, and can be an important alternative means of providing community development services, particularly for banks that do not provide traditional retail banking services and products.

4. *Innovation*

Roundtable members have expressed frustration that examiners seem to be requiring evidence of more "innovation and complexity" at each examination. The Roundtable recommends that the regulations provide for more flexibility for CRA examinations, and less specific emphasis on innovation. While innovation and complexity should continue to be treated as factors that add to the value of a CRA loan, service, or investment, a financial institution should not be downgraded for failing to demonstrate that some percentage of its lending and investments is innovative or complex. Financial institutions that are doing significant conventional lending into their communities should be rated satisfactory, not criticized for not being innovative and complex.

5. *Data Collection*

The Roundtable recommends elimination of the current data collection requirements. While the Roundtable believes that the information and documents contained in the public files should be accessible to the public, we also feel that the technicalities of maintaining the public files is burdensome, given that it is rarely requested. We propose making the public file information available at one central location. At the same time, the requirements should be retained for depository institutions to clearly publish the location of the public file as part of the branch notices and to comply with all requests for public file information that are made through the branches within five business days. Public file information could be made available through a variety of media, such as through the Internet,

sent upon telephone request or in person, effectively making it more readily available than under the current requirements.

The agencies have announced their intent to use Home Mortgage Disclosure Act (“HMDA”) and CRA data to disclose more detailed information about (1) loans that were purchased by an institution, (2) loans that were originated or purchased by an institution’s affiliate, and (3) Home Ownership and Equity Protection Act (“HOEPA”) loans. Given that this data is already publicly available through HMDA reports, having such information disclosed under the CRA appears redundant and unnecessary. It is unclear how the collection and publication of such data would facilitate consumer lending or why such information deserves additional scrutiny.

Including Predatory Lending Issues in CRA Examinations is Repetitive and Unnecessary

The proposed rule seeks comments on whether evidence that an institution, or its affiliate, has engaged in discriminatory, illegal or abusive credit should be included in an institution’s CRA examination.

The Roundtable agrees that predatory lending is in sharp contrast to the spirit of the CRA. We favor anti-predatory lending standards that protect lenders and borrowers. However, we oppose the proposed rule because it places additional burdens on financial institutions, and their affiliates, without providing additional benefits to the consumer.

In general, the Roundtable opposes using the CRA examination as an enforcement tool for other federal and state laws. The ratings afforded depository institutions under the CRA should reflect whether or not depository institutions are successful in meeting the credit needs of their communities. They should not be used as a remedy for violations of other federal and state laws, especially those laws that have little bearing on the credit practices of depository institutions in low- and moderate-income communities. We believe that predatory lending issues are already taken into account in fair lending examinations and other contexts. Therefore, an additional component in CRA examinations for abusive practices is unnecessary and would be duplicative.

Most of the laws enumerated in the proposed regulation go beyond discriminatory credit practices and have no bearing on how well an institution is serving the credit needs of its community. For example, section 5 of the Federal Trade Commission Act was enacted to address unfair methods of competition and section 8 of the Real Estate Settlement Procedures Act (“RESPA”) to prohibit certain unearned fees and kickbacks with regard to the real estate settlement process. The relevance

that violations of these laws governing market conduct have to providing credit to low- and moderate-income communities is unclear.

We believe that the proposed regulation's approach to predatory lending is too subjective. We are concerned with language in the preamble that seems to indicate an institution need not have violated a law or that the conduct need not be illegal for the institution to have its CRA rating adversely affected. For example, will the fact that an institution has been sued for a violation of section 8 of RESPA be credible evidence of predatory lending? It is also very difficult, and counterproductive, to define subjective terms that could vary with the situation, such as "abusive" practices. The existing CRA regulations, which provide that evidence of discriminatory or other illegal credit practices will adversely affect the evaluation of an institution's performance, already ensure that illegal credit practices will be considered in determining an institution's CRA rating. Any additional requirements in CRA examinations for abusive practices would appear to be excessive.

Conclusion

The member companies of the Roundtable support the agencies' efforts to update the CRA regulations and we will continue to work with the regulators on this endeavor. However, we believe that the current proposal marks a missed opportunity to make significant changes that would enhance CRA.

We believe further action is necessary. The recommendations above would help promote consistency in CRA evaluations, hold institutions accountable for their performance, and reduce regulatory burden. These changes would benefit the consumer as institutions would be allowed to meet the credit needs of everyone in their respective communities without encumbrances.

In addition, the Roundtable specifically opposes including evidence of predatory lending in a depository institution's CRA examination. Since abusive and other discriminatory practices are taken into account in fair lending examinations and other contexts, we believe the proposed amendment is duplicative and unnecessary.

If you have any questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel