

FIRST NATIONS DEVELOPMENT INSTITUTE

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February 5, 2004

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

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

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

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

Dear Officials of Federal Bank and Thrift Agencies:

As a member of the National **Community** Reinvestment Coalition, First Nations Development Institute urges **you** to withdraw **the** proposed changes to the Community Reinvestment Act ("CRA") regulations. CRA **has** been instrumental **in** increasing access to homeownership, boosting economic development, and **expanding** small businesses **in** the nation's minority, **immigrant**, rural areas of Indian Country, and low-and-moderate income communities. **Your** proposed changes arc contrary to the **CRA** statute because they will halt the progress made in community **reinvestment** within Indian **Country**.

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 elements: 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. Within Indian Country, housing continues to be a growing concern as is the financial services required to obtain affordable housing. 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 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 exams 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 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.

Currently, predatory lending is a **problem** in many Native American communities. Predators in the **lending process** utilize a **variety** of practices that include **excessive rates and fees, the sale of unaffordable loans, and fraud**. The impact of predatory lending is significant. Predatory lenders rob families and communities of their assets. **Many** Native American communities are geographically and culturally removed, are **unwary of** these financial practices, **and** are a target of unscrupulous lenders. By continuing to shield banks **from further** consequences, **Native Americans** will continue to fall victim to predatory lending more **often than** the general **population**.

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 and communities 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).

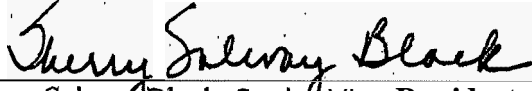
The positive aspects of the proposed data **enhancements** do not begin to make up for the significant harm caused by the first **two proposals**. Furthermore, the federal agencies are not utilizing the data enhancements in order to **make** CRA exams, but must **use** the new **data** to provide less weight on CRA exams to high cost loans than prime loans and assign **less** weight for purchases than loan originations. As to how **the** enhanced data will effect Indian Country, this **has** yet to be determined **given** the lack of data collected or shared by depository institutions in Indian Country. The lack of data on Indian Country makes responding to this proposal difficult.

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,



Sherry Salway Black, Senior Vice President
First Nations Development Institute

CC:

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