

From: Pittsburgh Community Reinvestment Group, Bethany Davidson
Subject: CRA Regulations Hearings

Comments:

Subject: Community Reinvestment Act Regulation Hearings-Docket ID
OCC-2010-0011, Docket No. R-1386, RIN 3064-AD60, Docket ID OTS-2010-0019

Dear Sirs/Madams:

RE: CRA Regulation Hearings

Thank you for convening these hearings. Regulatory Rulemaking and modernization is an ongoing process. Today, we write to urge you to strengthen the Community Reinvestment Act (CRA). Meaningful revision and reform to CRA will ensure economic recovery that promotes sustainable lending to small businesses for job creation and responsible home lending. Please do not stop at CRA improvement alone, but see that CRA is applied broadly throughout the financial industry in order to maximize safe and sound lending and investment in communities. Address all of its shortcomings and limitations to make CRA a comprehensive tool that promotes and protects the health and wellness of our financial industry, communities and neighbors.

In Pittsburgh and Southwestern Pennsylvania, CRA has been truly instrumental in forging partnerships between the financial industry and community organizations which has created 2 ½ decades of innovative community development lending and consumer products. CRA has allowed Pittsburgh-area residents to realize the dream of homeownership in a safe, sustainable way. Due to the number and strength of these partnerships and our fortune of being the home of numerous large and mid-size FDIC-insured and CRA-regulated financial institutions, the secondary mortgage market, which is not beholden to nor regulated by any agency was, to a certain extent, held at bay. Our foreclosure crisis and economic meltdown was not as drastic or as acute as other of our less-fortunate neighboring cities and counties.

And we have been far from immune to this crisis.

Even with strong partnerships, consistent relationship building, dedicated leadership, and watchdog groups like the Pittsburgh Community Reinvestment Group and the Fair Housing Partnership of Greater Pittsburgh, there were over 11,000 foreclosure filings in 2008, 7,000 in 2009 and over 5,000 so far this year. Even with this foundation of CRA, our individuals and the primary market institutions have seen a drastic deterioration of personal and institutional wealth and have suffered from the greed and immoral actions of the un-regulated and unfettered secondary market.

We know that CRA promotes care and sustainability in lending. The law requires safe and sound lending of those institutions and activities that it currently covers. It would have been a preventative cure to the foreclosure crisis, were it not for the limitations of its scope. Research conducted by Federal Reserve economists documents that home loans made by banks in their CRA assessment areas are about half as likely to end up in foreclosure as loans issued by independent mortgage companies. In addition, CRA small business and community development lending exceeded \$1 trillion for America's neighborhoods from 1996 through 2008. It is clear that CRA has made a positive impact when and where it

is applied. Now is the time to see the Act broadened and more activities covered and people and communities protected by safe and sound lending.

Although CRA has been instrumental, the limitations of various components of the Act show that it has not realized its full potential. In the just-over 30-years since its creation, if CRA had been updated in a comprehensive manner, we would have already realized its impacts. Today, we ask you to make CRA a modern tool for modern times. In particular, we believe that a regulatory rulemaking of the Community Reinvestment Act should address the following areas:

Assessment Areas

As currently defined by the CRA regulation, assessment areas, the geographical locations covered by CRA exams, generally consist of metropolitan areas or counties that contain bank branches. However, while some banks still issue loans predominantly through branches, others make the majority of their loans through brokers and other non-branch means, including online mechanisms.

As a result of the current definition of assessment areas, the share of all home purchase loans made by banks operating in their CRA assessment areas has dropped to about 25 percent. Narrow assessment areas facilitate problematic lending practices that are not scrutinized on CRA exams. Research demonstrates that lending by institutions not covered by CRA or by banks outside of their assessment areas are more likely to be high-cost.

In Allegheny County, Pennsylvania, Bank of America holds the largest market-share of mortgages, including those that it originated, and those that it bought and now services. Yet, Bank of America does not have one single bricks&mortar branch office in the area. Their self-selected minimum threshold is to only be assessed in areas where they have more-than 100 bricks&mortar branches. Because of this, over 10% of all mortgages in the area, all held by one institution, have seen no regulation whatsoever.

The Office of Thrift Supervision (OTS) is the one agency that went beyond official assessment areas on CRA exams for non-traditional thrifts, but these exams still examined only a minority of the thrifts' loans. We ask the agencies to significantly improve upon the OTS' precedent and meaningfully include the great majority of bank and thrift loans on CRA exams.

Mandatory Inclusion of Mortgage Company Affiliates on CRA Exams

Under CRA, banks have the option of including their non-depository affiliates, such as mortgage companies, on CRA exams. Banks are tempted to include affiliates on CRA exams if the affiliates perform admirably, but will opt against inclusion if the affiliates are engaged in risky lending or discriminatory policies. We believe the agencies have the authority to include all non-depository affiliate lending on CRA exams to ensure that the lending affirmatively responds to credit needs in a safe and sound manner.

Locally, National City Bank and its affiliates was one of the largest investors in sub-prime mortgages and, simultaneously, community development activities. Only some of its affiliates were included on its most recent CRA exams and National City (of Pennsylvania, and then of Ohio) received Outstanding ratings on every exam over the last 20 years up until 2008 when, just before the bank nearly failed and was acquired by PNC Bank, did it receive a Satisfactory. Even

then, the score did not accurately reflect the financial position of the bank. In the aftermath of the acquisition and sale of portions of National City's assets, hundreds of jobs have been lost, dozens of branches closed, mortgages originated by National City Bank and its affiliates continue to go into default and foreclosure, and the community-support that the bank provided has been lost.

Include Bank Lending and Service to Minorities on CRA Exams

Given the evidence of lending disparities by race, we believe that CRA exams must explicitly examine lending and services to minority borrowers and communities. A large body of research shows that minorities received larger percentages of subprime loans than whites, even after controlling for borrower creditworthiness and other characteristics. Earlier this year, the Fair Housing Partnership of Pittsburgh released the results of a study that demonstrated that non-white borrowers, with all else being equal, receive higher mortgage rates than their white counterparts by most Pittsburgh-area institutions. Overall, it is probable that considering lending and branching by race of borrower and neighborhood on CRA exams would lessen the racial disparities by encouraging banks to increase their lending and services in communities of color. Before the 1995 changes to the CRA regulation, CRA exams considered lending to minorities as an assessment factor, suggesting the agencies thought they had the authority to consider lending to minorities on CRA exams.

Expanding the activities that are CRA 'credit-worthy' will encourage, even require, that institutions look beyond basic deposits and lending to meet the needs of the market. With the proliferation of payday lenders and check cashing services, scoring these other day-to-day lending activities in the service and investment tests and requiring reporting on data that reflects the access to the full range of banking services for the underbanked, not just to lending and deposits and other activities, will further ensure that market needs are being met in a safe, sound, and sustainable way.

CRA Exam Ratings and Weights

The scale of four possible ratings does not provide meaningful distinctions in performance and has resulted in a 98 to 99 percent pass rate over the last several years. The agencies should introduce Low and High Satisfactory as possible ratings in addition to the four existing ratings. In addition, the agencies should develop better weighting systems so that routine investments like purchasing loans on the secondary market do not receive as much weight as more difficult investments such as equity investments in small businesses, or participating loans by small-mid-size institutions in challenging markets. Likewise, we do not believe that mitigating risk and lending through intermediaries, such as CDFIs and other agencies, should receive the same weight as direct lending to individuals and communities.

We do not believe that major changes in CRA examinations are desirable. Some will argue that more banks should be eligible for streamlined exams; we believe that the recent changes went too far in making exams too easy for mid-size banks. Rigorous exams require more safe and sound lending from institutions.

CRA Enforcement Mechanisms

Mergers have traditionally been a major means of CRA enforcement but the frequency of mergers is likely to continue to decline over the next several years. Consequently, additional enforcement mechanisms are needed. For

instance, banks could be required to submit CRA improvement plans, subject to public comment, when they receive either a low rating overall or in any assessment area. CRA exams and merger approval orders could include an "expectations section" that either mandates or recommends (depending on the extent of the deficiency) improvements to specific aspects of CRA performance such as a particular type of lending or investment.

The agencies must also boost the rigor of the fair lending reviews that probe for evidence of illegal and discriminatory lending. Fair lending reports on CRA exams must be detailed explanations of the fair lending tests used instead of the one or two sentences currently on most CRA exams. In addition, the concept of illegal and discriminatory lending must be expanded to include unsafe and unsound lending. Banks have failed CRA exams because they made or financed unsafe loans; the fair lending review must routinely indicate whether the review found evidence of unsafe and unsound loans.

Some commentators will favor "incentives" to coax institutions into improved CRA performance. We would be supportive of exploring programmatic methods to increase tax credits or the tax credit amount under the Low Income Housing Tax Credits or New Markets Tax Credit for institutions receiving Outstanding ratings. But we are opposed to exemptions from CRA review on merger applications or decreasing the frequency of CRA exams for institutions with Outstanding ratings. CRA performance is likely to decline when institutions receive less frequent exams and public scrutiny.

Data Enhancements

By holding lenders accountable, publicly available data, particularly the Home Mortgage Disclosure Act, has been vital for increasing responsible lending to traditionally underserved borrowers. Applying a similar rationale, the limited CRA small business data must be enhanced to include the race and gender of the small business borrower. In addition, the agencies must require census tract level disclosure of community development loans and investments. In order to promote access to basic banking services, the agencies must require disclosure of enhanced data that shows types of deposit account (such as basic lifeline) by census tract location of the residence of bank customers. Likewise, data on the type consumer lending by borrower demographics and census tracts can promote access to affordable consumer loans and alternatives to abusive payday loans. Improvements in data disclosure will enhance the ability of CRA exams to assess if banks are responsive to the full range of credit needs of communities.

Current data reporting is too basic and does not adequately portray the lending activities of financial institutions, which 'helps' some institutions receive higher ratings, and negatively impacts others who are lending responsively and responsibly to all borrowers, the traditionally well-served and those under-served communities. Enhancing data reporting requirements will allow for all institutions activities to be more accurately evaluated by regulatory agencies, and by individuals looking to create an account or buy a home, or a community organization working to revitalize their residential or main street areas in need of small business or community development products.

Conclusion

The severity of the foreclosure crisis would have been substantially lessened if the entire financial industry had an obligation to serve all communities

consistent with safety and soundness. We believe that the regulatory agencies can contribute significantly to ensuring sustainable economic recovery by updating the CRA regulation. In addition, we believe that Congress must do its part and apply CRA to non-bank institutions including mainstream credit unions, independent mortgage companies, insurance firms, and investment banks.

Sincerely,

The Pittsburgh Community Reinvestment Group

cc: PCRG Membership:
Bloomfield-Garfield Corporation
Central Northside Neighborhood Council
East Allegheny Community Council
East Liberty Concerned Citizens Corporation
East Liberty Development, Inc.
Fineview Citizens Council
Friendship Development Associates
Garfield Jubilee Association
Hazelwood Initiative, Inc.
Highland Park Community Development Corporation
Hill Community Development Corporation
Housing Alliance of Pennsylvania
Lawrenceville United
Manchester Citizens Corporation
Mt. Washington Community Development Corporation
Northside Leadership Conference
Oakland Planning and Development Corporation
Operation Better Block
Perry Hilltop Citizens Council
Polish Hill Civic Association
South Side Local Development Company
Uptown Partners of Pittsburgh
West Pittsburgh Partnership for Regional Development
The National Community Reinvestment Coalition

Endnotes

Sources for the research cited in this letter can be found in the testimony submitted by the National Community Reinvestment Coalition.

Bethany Davidson
Pittsburgh Community Reinvestment Group