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203

MACDC

October 17, 2001

Ms. 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-1112

Docket No. 01-16
Communications Division
Public Information Room
Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW
Washington DC 20219

Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th St. NW
Washington DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G St. NW
Washington DC 20552
Attention: Docket No. 2001-49

Dear Officials of Federal Banking Agencies:

Thank you for the opportunity to suggest changes and improvements to the regulations governing enforcement of the federal Community Reinvestment Act (CRA) of 1977, prompted by the Advanced Notice of Proposed Rulemaking (ANPR). We strongly believe that the CRA has been instrumental in increasing lending and investing to low- and moderate-income communities across the country, particularly after the regulatory changes made in 1995 that emphasized bank performance in providing services and in making loans and investments. The federal banking agencies must now update the CRA regulations in order to further reinvestment in low- and moderate-income communities, as well as in underserved minority communities.

The Massachusetts Associations of Community Development Corporations (MACDC) is a statewide non-profit trade association representing 67 community development corporations (CDCs) throughout the Commonwealth. Our members, and their affiliates, work with low and moderate income and minority residents to develop and acquire affordable housing, commercial and industrial property, start and expand small businesses and to make private and public institutions accountable to the needs of community residents. MACDC advocates on behalf of our members on issues that support their activities, including the CRA. We have testified at various regulatory hearings and submitted comments relating to the implementation of the CRA. We have also negotiated and monitored the implementation of many CRA Agreements with most of the major area banks to increasing lending, investment and services to our members and the low and moderate income (LMI) and minority communities statewide. Since 1999, these agreements total over $1.3 billion.

As a member of the National Community Reinvestment Coalition (NCRC), we wholeheartedly support their comments relating to the ANPR. With this letter, we hope to emphasize particular portions of those comments as well to add additional comments. In this interest of space and time, we will keep our comments short and will not attempt to recreate all of NCRC's comments nor address every possible line of CRA regulation. This should not lead you to believe that we support all current regulations not commented on here.

General Comments

Along with NCRC, we believe that the results of the positive changes to the CRA regulation in 1995 have been significant. The Department of Treasury's study on CRA found that lending to low- and moderate-income neighborhoods is higher in geographical areas that banks designate as their CRA assessment areas than in areas where banks are not examined under CRA.

Given changes in the industry since 1995, including the passage of the Gramm-Leach-Bliley Act of 1999, we believe that now is the time to update CRA to reflect new and expanded powers available to banks, including the opportunity to conduct traditional bank business through affiliates that are not chartered banks. We therefore urge the regulatory agencies to mandate that all lending and traditional banking activities of all affiliates must be included on CRA exams.

In addition, regulators begin applying the standard used by the Gramm-Leach-Bliley Act (GLB) which mandates that banks with failing CRA ratings cannot engage in mergers with non-bank financial institutions. The Federal Reserve has applied this statutory requirement only to the acquiring institution, not the acquired, although the GLB makes no such distinction. The federal banking agencies must end this inconsistency since passing CRA exams must be an incentive for banks that wish to be acquired as well as banks seeking to acquire other institutions.

We believe that additional changes need to be made to the CRA guidelines to better monitor and regulate current bank practices. These include:

- Assessment areas need to be changed to reflect the practice by banks to use brokers and other non-branch platforms. We support NCRC's mandate that CRA exams include all communities in a bank conducts a majority of its business. This can be defined as wherever a depository institution and/or its affiliates have branches, offices, ATMs, and/or areas where they have more than one half of a percent of the market in loans.

- MACDC strongly believes that branch-less and other non-traditional banks that offer bank services and loans on a nationwide basis should be required to perform at the standard large bank exam criteria using the expanded definition of an assessment area provided above. With the advances in computers and industry software such as CRA Wiz™ and HMDAWare™, it is a relatively straightforward task to list the metropolitan areas and non-metropolitan counties in which non-traditional lenders make a substantial number of their loans and collect their

deposits. Then, examiners can apply NCRC's recommendations concerning assessment areas so that the great majority of a branch-less bank's loans are included on its CRA exam.

- CRA regulations must explicitly consider minorities on the lending test just like low- and moderate-income borrowers and communities. Also, loan originations must be examined separately from loan purchases and must receive more weight.

- Originations of home loans should also be accompanied by an examination of high default and foreclosure rates. Federal banking agencies must collect delinquency and default data by race and income level of neighborhood and borrower, focusing on areas where levels of default and foreclosure are significantly higher in concentrated areas as compared to wherever else the bank makes such loans. This is particularly important to prevent banks from engaging in irresponsible, but not illegal, lending practices that adversely affect LMI and minority communities.

- This same standard should be applied more strenuously to catch subprime and predatory lending but should not be limited just to that type of lending. In addition, subprime and predatory lending should be discouraged by rewarding more credit for originating prime loans than for subprime loans and be penalizing predatory lending outright.

- Prime lending must receive more weight on CRA exams, particularly for banks that engage in both prime and subprime loans. Prime and subprime loans must be evaluated separately just like home mortgage, refinance, and home improvement lending are currently. In order for a bank that offers both prime and subprime lending to pass its lending test, it must receive at least a satisfactory rating on the prime portion of its test.

- Specific commitments made by banks, as part of unilateral community lending plans or CRA agreements with other parties, should be considered as part of the bank's performance assessment. (We fully understand that the regulators cannot legally enforce the agreements themselves as binding contracts, however, we believe that the substance of the agreements should be considered.)

- Data should be required and disclosed on the distribution of checking and savings accounts by the race and income level of the borrower and census tract. In the previous regulatory changes of 1995, the agencies decided against this due to the cost of collecting the data. Technology has progressed rapidly since then. In particular, as long as banks have the street addresses of account holders, they can apply "geo-coding" software to translate the street addresses to the census tract location of the account holders. Any added cost borne by the banks would be outweighed by the public benefits of this data, as well as valuable information for the banks on their position in the market for deposits. It is becoming much more difficult to measure how well banks are providing services in the absence of basic information on checking and savings accounts.

- The costs of services must be a factor on the service test because high fees on banking products defeat CRA's purpose of meeting deposit needs that build wealth in LMI communities. Lenders with high fees exhibiting disparate impacts must receive lower points on the service test under a new "cost and accessibility" portion of the test. In addition, if two similarly situated lenders offer similar amounts of bank checking and savings accounts to borrowers, but one lender charges significantly higher fees, the higher cost lender should receive fewer points on the CRA service test.

- The federal agencies should establish expectations that banks will receive more points on the community development portion of the service test if banks present data on the numbers of LMI and minority consumers financial counseling sessions or other community development services reach. Data on the outcomes, including the percent of customers attending counseling who later opened accounts, should also be provided. CRA exams must make comparisons among peer banks of the numbers of LMI and minority consumers receiving community development services. Similarly, alternative delivery systems, such as internet banking, should be scrutinized how many low- and moderate-income borrowers use these services. Banks wishing to receive credit for these delivery systems should provide data on the systems' use at the level of customer income and census tract.

- To combat overall CRA grade inflation, low and high satisfactory ratings must be possible overall ratings on all CRA exams in addition to ratings on subsections of the exams. The CRA ratings have become less meaningful in recent years since less than 2 percent of banks and thrifts fail their exams. If low and high satisfactory were possible ratings, greater distinctions can then be made between banks' community reinvestment performance since CRA examiners can choose from six possible ratings instead of the current four ratings.

- Grade should require a rigorous definition of "innovation" criteria to reward new and creative products by possibly improving ratings, but should not be used to penalize banks if they are meeting lending, investment, and service needs by tried-and-true and effective techniques and products. For example, banks in Massachusetts should get additional credit for making creative improvements to their statutory compliance to make available loans through the Massachusetts Housing Partnership. However, banks that simply comply with the statute but make no creative improvements to make the funds more competitive or useful should not be penalized.

- When approached by regulators, community groups should also always be notified about the identity of the bank(s) that are about to be examined. On several occasions, MACDC and our members have commented upon instances in which an examiner will not divulge the name of the bank being examined. Community groups cannot provide meaningful input when the names of the institutions are withheld.

- Bank responsive to credit, investment, and service needs should be highly considered by examiners. CDCs and local public agencies have considerable experience and knowledge of which institutions respond to changing needs for investment capital and which do not. They will also have partnerships that involve loan products or low-cost savings and checking accounts. CRA exams, rarely if ever, include adequate community group contacts regarding the responsiveness as well as the quantity of bank's lending, investment, and service activities in traditionally underserved neighborhoods.

- The Federal Reserve Board must lift its Regulation B prohibitions on the reporting of race and gender of the small business owner. In addition, instead of only two categories (less and greater than $1 million in revenues), the specific revenue size of the business borrower must be included in the CRA small business data. The current policy of allowing lenders to not report the revenue size of the small business if they did not use revenue size in making the loan decision must be discontinued. Otherwise, CRA examiners will not know how many of the smallest businesses lenders are reaching.

- The CRA small business data must include action categories that are similar to the action categories in HMDA data (which are applications, approvals, denials, withdrawn, incomplete, and approved not accepted. Further, the small business data must report originations separately from renewals and refinances since these loan purposes serve significantly different credit needs. Likewise, a data field should be added that indicates whether the small business loan was a credit card loan or a regular loan.

- Community development lending data reported under CRA should be reported on the census tract level, not only the "aggregate" level. The purpose of the loan must also be reported, using categories of affordable housing, economic development, loans for social service facilities, and other common categories of community development loans. Loans for investments should likewise be reported on a census tract level. The purposes of investments must also be recorded including grants for community development organizations.

Finally, we are concerned that portions of CRA regulation may be weakened at the request of the industry. We would like to highlight specifically the following items:

- MACDC vigorously opposes the elimination of the investment test since LMI and minority communities are faced with a shortage of equity investments for small businesses and other pressing economic development needs. Rather, we believe that the investment test should be strengthened by differentiating among types of investments and the extent to which investments are not routinely provided by the private sector. CRA exams could readily incorporate ratios that compare grants as a percent of bank assets and ratios that compare the percent of difficult and "patient capital" investments as a percent of bank assets. Along with meaningful information on the extent of targeting of low- and moderate-income communities, this additional data would make the exams more rigorous and consistent in their judgments of bank performance.

- MACDC also believes that community development services should remain as part of the service test because community development services, such as financial literacy, prepare consumers to take advantage of bank services. They are not similar to community development investments or community development loans.

- MACDC opposes vigorously suggestions that the asset level qualifying for the small bank exam be raised above $250 million in assets. According to the most recent data (1st quarter 2001) on the FDIC web page, about 7,500 or 76 percent of the banks and thrifts in this country have assets less than $250 million and therefore qualify for the small bank exam. If the asset level for qualifying for the small bank exam is raised to $500 million, about 90 percent of depository institutions would be subject to a streamlined test only once every four or five years.

Thank you for considering our comments. We are available for questions at your convenience.

Sincerely,

Andrea Caliz Luquetta
Director of Housing and Community Development