



NATIONAL  
COMMUNITY CAPITAL  
ASSOCIATION

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**Docket No. 01-16**

Communications Division  
Public Information Room - Mailstop 1-5  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

**Docket No. R-1112**

Ms. Jennifer Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**Attention: Comments/OES**

Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

**Docket No. 2001-49**

Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

To Whom It May Concern:

On behalf of the National Community Capital Association, which represents more than 100 member community development financial institutions (CDFIs), I am pleased to provide comments in response to the Advanced Notice of Proposed Rulemaking published on July 19, 2001.

The Community Reinvestment Act (CRA) has been instrumental in increasing lending and investing to underserved communities nationwide. Because of CRA, banks and other financial institutions often partner with CDFIs and have aggressively entered new markets that were previously ignored or "redlined".

CDFIs are private sector financial intermediaries that help poor people become self-sufficient and provide new services and development to low-income communities. Currently, nearly 600 CDFIs manage more than \$6 billion in predominantly private capital and have helped create hundreds of thousands of jobs, affordable housing units, and community services in many of our nation's most distressed markets, both rural and urban.

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Regulatory changes to CRA during 1995 strengthened the law by emphasizing a bank's performance in providing services and in making loans and investments. In addition, the 1995 revisions to CRA shifted the emphasis in examinations from process to outcomes. As a result, a majority of the more than \$1 trillion in CRA-related agreements negotiated since 1977 have been committed in the last few years.

## **SUMMARY**

CRA is constrained today by outdated regulations that do not adequately recognize seismic shifts in the financial services industry. Financial reform laws, bank mergers, credit card banks, and Internet banking raise concerns about how structural changes in the financial services industry will impact poor people and underserved communities. CRA needs to be modernized to keep in step with financial modernization and to stimulate increased activity in economically disadvantaged communities.

### **National Community Capital's comments and recommendations focus on four areas.**

#### **1. Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy.**

After passage of the 1999 Gramm-Leach-Bliley Act, banks became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans—especially in the subprime markets.

However, as enacted, CRA covers only banks—a fraction of a financial institution's lending. To keep CRA in step with financial reform, it should be extended to all financial services companies that receive direct or indirect taxpayer support or subsidy.

In our paper "The Parallel Banking System and Community Reinvestment", (copy enclosed), National Community Capital uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety-net against some nonbank insolvencies. In October 1998, the Federal Reserve Board drove this point home convincingly when it intervened to structure a massive bailout of Long Term Capital Management by several taxpayer-subsidized banks.

National Community Capital strongly urges regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams. This change would most accurately assess the CRA performance of banks that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers.

#### **2. A bank's assessment area should be determined by how a bank defines its market.**

Under CRA, banks are required to provide non-discriminatory access to financial services in their market—assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2000, banks no longer just accept deposits—they market investments, sell insurance, and issue securities and are rapidly expanding the more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas have been typically defined.

Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate—beyond bricks and mortar. Moreover, it disregards the spirit of the CRA statute.

As another much-needed step towards modernizing the system of assessment, simplify the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

3. **Predatory lending has become "the new redlining," perpetuating the very practice that CRA was intended to stop.**

Abusive lending practices remain serious problems in many distressed communities. The CRA statute states clearly that lenders have an affirmative obligation to serve communities in a safe and sound manner. CRA exams should rigorously evaluate subprime activity and ensure that lending is conducted in a non-discriminatory and non-abusive manner that is safe for the institution *as well as the borrower*.

Lenders should be encouraged to "refer up" or make as many prime loans as possible since prime loans are more affordable for minority and low- and moderate-income borrowers. Significant research concludes that too many creditworthy borrowers are receiving over-priced and discriminatory subprime loans. Thus, CRA exams should provide both a positive incentive to lenders who "refer up" and penalize those who steer unsuspecting borrowers into senselessly over-priced loans.

Finally, improve data disclosure to uncover predatory lending practices. For example, the Federal Reserve Board should adopt its proposed HMDA reform to include information on interest rates and fees so that subprime lending can be assessed on CRA exams.

4. **Maintain the three-part (lending, service, and investment) examination.**

The lending test should remain the test with the greatest weight. Purchases of loans should not count as much as loan originations on CRA exams since making loans is the more difficult task. Furthermore, originations are a better indicator of a bank's commitment to providing credit to underserved communities; purchases of loans do not satisfy the intent of CRA.

The service test encourages partnerships with CDFIs like us. These CDFI partnerships benefit banks by providing them with local market knowledge, serving as a local product delivery system, and helping to grow customers and markets. Through investments in CDFIs, banks contribute to the building of sustainable community-based institutions. While direct bank services should be paramount, partnerships with CDFIs must also be recognized as highly valuable.

The investment test provides a source of dedicated equity capital essential for capacity building, leveraging investment, and economic growth. With the anticipated debut of the New Markets Tax Credit, financial industry investors and community development entities may find it easier to document their qualified investments for purposes of both CRA and the tax credit.

These recommendations should complement enhanced enforcement of CRA. Updating the CRA regulation will produce CRA exams that are rigorous, performance-based, more consistent, and that are able to better capture the lending, investment and service activity of rapidly changing banks.

Thank you for your consideration.

Sincerely,



Mark Pinsky  
President and CEO