NATIONAL
COMMUNITY
REINVESTMENT
COALITION

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Manager
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Office of Thrift Supervision
1700 G St. NW
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Attention Docket No. 2000-94

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) believes that comprehensive application procedures are critical in order to increase access to capital and credit for traditionally underserved communities. NCRC's 800 member community reinvestment organizations know first hand the impacts of mergers and other corporate changes on the availability of reasonably priced credit in minority and low- and moderate-income neighborhoods. If a merger is approved without sufficient regulatory oversight, it is likely that the new institution will decrease the level of lending or may be engaging in unsafe predatory lending.

The Office of Thrift Supervision (OTS) has been among the more rigorous of the federal agencies in reviewing corporate applications. NCRC believes that these proposed changes have elements that can enhance the OTS' review process; however, other elements of the proposed changes could undermine OTS' historical rigor. Specifically we believe the following:

Proposed Changes that Enhance Quality of Application Review Process

Mandating that CRA Information Cannot be Confidential – Proposed Section 516.35

NCRC applauds the OTS proposal that financial institutions cannot declare the CRA portions of their applications confidential. The OTS cites examples of applicants attempting to designate CRA-related portions confidential, and the OTS remarks

correctly that this has served to needlessly delay the public's access to the CRA plans of applicants.

NCRC would add, however, that the OTS must require detailed and specific CRA plans in which the applicant describes how its CRA performance will be improved after the merger. NCRC and its members have encountered instances in which an applicant describes its CRA plan in one paragraph. This is not only inadequate; it is insulting to the members of the public that wish to know how the institution will improve its CRA record. As the OTS proposes, these inadequate CRA plans must result in an OTS determination that the application is "materially deficient" and ineligible for further review.

We believe that a CRA plan must discuss major benchmarks including the number and percentage of loans an institution made in all of its markets to low- and moderate-income borrowers. It then must indicate how the institution intends to improve upon this performance through the maintenance or introduction of affordable lending products and enhancements to branches and other delivery systems. Finally, the CRA plan must include discussions of how the institution will ensure that it does not make or purchase predatory loans. Since the OTS has set the standard in other aspects of its application procedures, it should also codify the elements of a required CRA plan in its application regulations.

Another point we wish to stress is that other parts of the application including management issues or anti-trust considerations bear directly on an institution's ability to deliver on its CRA plan. In its procedures for considering confidentiality and FOIA requests, the OTS must establish that all parts of the application are publicly available unless the applicant can clearly establish any breach of privacy or competitive harm resulting from public availability. Recently, some lenders have tried to conceal market share data relating to deposits that is critical for considering anti-trust issues. Other lenders have successfully concealed basic information on loan terms and conditions, citing competitive harm. But the general public can obtain some information (but not the most current information) on loan terms and conditions via prospectus statements issued to the Securities and Exchange Commission.

The OTS must codify a minimum and sufficient level of information relating to anti-trust matters, CRA issues, management issues, and fair lending matters that makes it possible for the general public to make informed public comments. For example, it would not harm a competitive position of a thrift if the financial institution was required to state the number and percentage of its loans that exceed the interest rate and loan term thresholds recently established by HUD beyond which loans will not count towards

Fannie Mae and Freddie Mac's affordable housing goals.[1] In addition, deposit market share data must be publicly available so that members of the general public can compute HHI indices on market concentration.

OTS Requests for Additional Information & Additional Public Comment Periods – Proposed Sections 516.220 & 516.250

NCRC supports the OTS proposal to codify that the agency can extend review periods by 15 calendar days and then by another 15 calendar days if the agency deems that it needs additional information by the applicant. A sufficient time period to review additional information is critical so that the OTS can determine if it has the necessary information with which to consider statutory factors including CRA, fair lending, and anti-trust issues. NCRC also believes, however, that when the OTS requires the applicant to furnish additional information, it must also grant new public comment periods. NCRC supports the OTS proposal that the OTS will have the authority to require new public notices and comment periods in these cases. However, NCRC believes that the regulation must mandate the OTS to require an additional comment period instead of granting the OTS discretionary authority to hold another comment period. The regulation could specify that the number of days of the additional comment period will be at the OTS discretion and could range from five days to twenty five days, depending on the amount and complexity of the additional information.

Suspension of Application – Proposed Section 516.260

The proposed regulatory changes include granting the OTS the authority to suspend processing an application in circumstances involving ongoing litigation or investigation of the applicant by another governmental entity. NCRC strongly supports this because previous merger applications considered by federal banking agencies have included instances in which the applicant is the subject of a fair lending investigation by a federal or state agency. In these cases, NCRC believes that the application must be suspended until an investigation and any subsequent legal action has been completed. If the OTS were to rule on an application before such an investigation is complete, the OTS may not have complete information about the fair lending record of an applicant or the OTS may unknowingly approve an application of a financial institution with unresolved fair lending problems.

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[1] HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 24 CFR Part 81. See Federal Register, Vol. 65, No. 211, Tuesday, October 31, 2000, pp. 65045 – 65229.

Computation of Time Period – Proposed Section 516.10

NCRC agrees with the OTS proposal that would clarify the time periods associated with either the public comment time period or the decision-making time period. It is appropriate to start the clock ticking on the day after an event, such as a filing of an application, particularly if the event occurs late in the business day. Likewise, it is appropriate to clarify that the end of a relevant time period cannot occur on a weekend day or a holiday, but rather would be the next business day.

Proposed Changes that Could Undermine the Application Review Process

Pre-Filing Meeting – Proposed Section 516.15

The OTS proposes to require pre-filing meetings regarding de novo applications, conversions, cross-industry applications, and other complex applications. The meetings are to occur at least 30 calendar days before the financial institution files an application. The financial institution must also submit a business plan to the OTS at least 7 calendar days before the pre-meeting. The OTS states that the pre-meeting is designed to expedite the application process by identifying significant legal and policy issues. NCRC's wariness about this proposal stems from our concern that regulatory officials and thrift personnel would discuss how to resolve issues so that the OTS can issue speedy approvals rather than how to submit an application that addresses the significant legal and policy issues. In order to prevent abuses of this proposed pre-filing meeting, NCRC believes that members of the general public be allowed to witness the pre-filing meetings either in person or via conference call. Alternatively, transcripts of the meeting must be immediately available via the OTS web page or via mail. If the OTS feels transcripts should not be publicly available, NCRC believes that the agency must drop its pre-filing meeting proposal.

Public Comment Procedures – Section 516.130

The OTS proposes that any person commenting on an application must also furnish copies of his/her public comments to the financial institution. If the OTS implements this proposal, it would be the only federal financial institution regulatory agency to require submission of comments to the applicant. While seasoned advocacy groups may not mind this, other community groups may be intimidated by this requirement. This requirement removes a layer of perceived protection from the process; under the current procedures, financial institutions obtain public comments from the OTS, not directly from persons commenting. It is almost like saying that a witness to a crime must submit written testimony to the accused party in advance of the trial. Since financial institutions are not required to make their

applications immediately available to the public via their web pages or other means, NCRC sees no compelling reason to make public comments immediately available to the applicants from the members of the public who wish to make comments.

Deleting Section 513 (b)(2) with CRA as Explicit Factor

NCRC disagrees strongly with the proposal to remove section 513 (b)(2) that requires a financial institution to demonstrate how its application will improve its compliance with CRA or other consumer-related statutes without affecting is financial resources. The OTS claims it is removing this section in its application regulations because "review standards in (other) applicable regulations sufficiently address these matters." While this may be technically correct, NCRC believes it is dangerous to omit CRA factors in application regulations. Such an omission leaves too much open to interpretation, making it possible for future OTS officials to discount CRA factors in application processing or limit the consideration of CRA factors on applications. Instead, NCRC believes the OTS must codify rigorous and specific CRA factors, including the mandatory submission of a specific and detailed CRA plan by applicants.

Finally, we wish to respond to the OTS request for comments on informal and formal meetings by stating that our member organizations find these meetings to be critical opportunities to make their views known to OTS officials and applicants. We would urge the OTS to require these meetings for all types of applications in addition to the merger applications. NCRC appreciates the opportunity to present our views on these important matters,

Sincerely,

John Taylor
President and CEO