



November 18, 2010

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson   
Director  
Division of Supervision and  
Consumer Protection

Richard J. Osterman, Jr.   
Acting General Counsel

SUBJECT: Joint Final Rule: Amendment to the Community  
Reinvestment Act Regulation

## RECOMMENDATION

We recommend the Board approve and authorize for publication in the *Federal Register* the attached Joint final rule revising the regulations implementing the Community Reinvestment Act (CRA). With your approval, the FDIC will issue this final rule jointly with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the Agencies).

The final rule would amend, on a temporary basis, the CRA regulation to permit consideration of activities that support eligible projects and activities in targeted areas identified in plans approved by the United States Department of Housing and Urban Development (HUD) under the statutorily-created Neighborhood Stabilization Program (NSP).

## DISCUSSION

### *Background*

The CRA requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.

In the Housing and Economic Recovery Act of 2008 (HERA), the American Recovery and Reinvestment Act of 2009, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress recognized the need to provide emergency housing-related assistance to stabilize communities affected by high levels of foreclosure. As part of those statutes, Congress created and funded the NSP and directed HUD to make grants

based on plans submitted to the agency that demonstrate the greatest need for redevelopment of abandoned and foreclosed properties. Eligible activities are set out in the HERA. These activities are consistent with current CRA regulations and guidance, including the purchase, redevelopment, and rehabilitation of foreclosed, vacant, abandoned, or demolished residential properties.

On June 24, 2010, a Joint Notice of Proposed Rulemaking (NPR) to enable expanded CRA consideration of activities that support eligible projects and activities in targeted areas identified in plans approved by HUD under the statutorily-created NSP was published in the *Federal Register* for a 30-day comment period. The Agencies together received 34 comments from a variety of industry, consumer, community development, and governmental entities.

### Proposed rule

In order to create opportunities to leverage HUD funding in areas with high levels of foreclosure, the proposed rule provided that the CRA regulations expressly permit consideration of loans, investments and services that support, enable, or facilitate projects and activities set out in the HERA in designated target areas identified by HUD in approved NSP plans. As provided in the proposed rule, the CRA activities must benefit low-, moderate-, and middle-income individuals and geographies, either in the bank's assessment area(s) or outside those areas if the bank has adequately addressed the community development needs of its assessment area(s).

### Comments and Final Rule

The commenters generally supported expanding the CRA regulation's definition of "community development" to encourage housing-related assistance to stabilize communities affected by high levels of foreclosures. Enhanced CRA consideration, to support activities that are NSP-eligible and are conducted in NSP-targeted areas was seen as consistent with the current need to leverage the Federally-supported State and local programs now under way in these areas. A few industry and government commenters suggested that the agencies adopt a broader rule that would include activities that are not NSP-eligible and/or are outside of geographies covered in NSP-targeted areas. Staff recommends adopting the definition of "community development" as proposed.

In the proposal, the regulatory text specifically referred to the two statutes that authorized funds under NSP1 and NSP2. Since the agencies issued their proposal, Congress provided an additional \$1 billion to the NSP under the Dodd-Frank Act. Based on this additional authorization, staff recommends the language in the proposed regulation be revised so that rather than having to amend the rule whenever a new statute provides additional funds under NSP, the rule references 'NSP' generally.

The rule as proposed would be temporary, ending no later than two years after the last date funds appropriated for NSP are required to be spent by those entities that received the HUD grants. Most commenters supported the proposal while a few suggested that

there be no “sunset” date. After consideration of the comments, staff recommends adoption of the rule as proposed.

The proposed rule created a limited exception to the CRA rules that expressly encourage activities that benefit low- and moderate-income individuals or geographies to permit favorable consideration of activities that also benefit middle-income individuals and geographies. While some comments emphasized that focus of CRA should continue on low- and moderate-income households and neighborhoods, most fully supported the proposal to redefine “community development to align with NSP-eligible activities in designated areas identified in plans approved by HUD. After consideration of the comments, staff recommends adoption of the provision as proposed.

The proposed rule also provided that an institution that adequately addressed the community development needs of its assessment area(s) may receive favorable consideration for NSP-eligible activities under the rule that are outside its assessment area(s). Commenters that addressed this issue unanimously supported the provision, provided the institution has met the community development needs within its assessment area(s). After consideration of the comments, staff recommends adoption of the provision as proposed.

### ***Effective date***

The attached final rule would be effective 30 days after publication in the *Federal Register*.

### **CONCLUSION**

Staff recommends that the Board adopt the attached final rule as recommended and authorize its publication in the *Federal Register*.

Staff members knowledgeable about this case:

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Attachment