**Community Reinvestment Act Regulation Hearings:**

**Docket ID OCC-2010-0011;Docket No. R-1386;**

**RIN 3064-AD60; Docket ID OTS-2010-0019**

My comments are limited to three CRA issues that impact affordable housing development and preservation for low-moderate income (LMI) people. Those issues are affiliate activities, community development, and CRA data collection, reporting, and disclosure.

**Affiliate Activities**

The agencies should revise CRA regulation to require that examiners routinely consider activities not just by all bank affiliates, but by all bank subsidiaries and independent mortgage companies[1] so that CRA regulation applies to all of today's mortgage lenders and all mortgage-related activities, including insurance companies and Wall Street investment houses.[2] Revising CRA regulation will benefit all consumers, especially low-LMI individuals and households. 2006 Home Mortgage Disclosure Act (HMDA) data indicates that while 34 percent of all mortgage loans are LMI loans, 13 percent are by banks and their affiliates outside their CRA assessment areas and 11 percent by independent mortgage companies.[3] In other words, over 70 percent of LMI loans are outside current CRA regulation.

The agencies should also revise CRA regulation to expand the definition of a CRA assessment area to include all areas in which a financial institution is profiting and

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[1] *See*, Ren S. Essene & William C. Apgar, *The 30th Anniversary of the CRA: Restructuring the CRA to Address the Mortgage Finance Revolution*, p 16, http://www.frbsf.org/publications/community/cra/30th_anniversary_cra.pdf.

[2] *Paying More for the American Dream IV: The Decline of Prime Mortgage Lending in Communities of Color*, p 13, http://nedap.org/resources/documents/PayingMoreIV_Final.pdf.

[3] Supra note 1 at 1.

conducting financial business.[4] Alternatively, as many commentators have proposed, the assessment area should at least include all areas in which an institution has more than a specified share of the lending or deposit market.[5] To leave the current definition of neighborhoods as where banks have branches and take deposits only tempts banks to resume risky subprime lending outside their CRA assessment area.[6]

**Community Development**

The agencies should consider all appropriate revisions to the definition of community development. Their recent proposal to add "loans, investments, and services that support, enable, or facilitate NSP-eligible activities in designated target areas identified in plans approved by HUD under the Neighborhood Stabilization Program (NSP)"[7] is an appropriate revision. The proposed addition will give a financial institution favorable CRA consideration for, among other things, donating other real estate owned (OREO) properties to non-profit housing organizations in eligible LMI areas.[8]

Another appropriate definition revision would be to add "loans, investments, and services that support, enable or facilitate community land trust (CLT) provision of affordable housing to LMI persons and households in CLT-identified and CRA-approved LMI areas." Given that CLTs have the lowest foreclosure rates,[9] this addition would

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[4] Supra note 2, at 13.
[5] *Community Reinvestment Act Regulations*, 69 Fed. Reg. at 5,735.
[6] Raymond H. Brescia, *Subprime Mortgage and Discriminatory Lending: Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act*, 60 S.C. L. Rev. 617, 632 (Spring 2009).
[7] Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS), *Notice of proposed rulemaking by OCC*, p 11, http://www.occ.treas.gov/ftp/release/2010-66a.pdf.
[8] Id.
[9] *See*, Emily Thaden, *Outperforming the Market: Making Sense of the Low Rates of Delinquencies and Foreclosures in Community Land Trusts*, p 12 (July 7, 2010), http://www.cltnetwork.org/doc_library/p308-FINAL%20NCLTN%20Foreclosure%20&%20Delinquency%20survey%20report%206--10-10%20PDF.pdf.

ensure that the housing in those areas remains LMI affordable for at least the initial 99 years of a typical CLT ground lease. Alternatively, CLTs should be given priority over other non-profit housing organizations under the recently proposed NSP addition.

**CRA Data Collection, Reporting, and Disclosure**

The agencies should consider changes to CRA data collection, reporting, and disclosure requirements. Incorporating more quantitative measures into the CRA Service Test would enable the CRA to assess more accurately the quality of a financial institution's outreach and disclosure to the LMI public it serves.[10] Quantitative measures should include the number and percent of a financial institution's branches and deposit accounts in LMI neighborhoods.[11] This will ensure that CRA exams contain substantive analyses on the distribution of a financial institution's branches and deposit accounts instead of simple assertions that it provides services to LMI consumers.[12]

Quantitative measures should also include a financial institution's record of receiving and denying loan applications.[13] The number of loan applications a financial institution receives and denies in a community relative to other communities is a good indicator both of its commitment to lend in that community and of the number of loans that community will receive.[14]

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[10] *See*, Roberto Quercia, Janneke Ratcliffe & Michael A. Stegman, *The Community Reinvestment Act: Outstanding, and Needs to Improve*, p 11, http://www.frbsf.org/publications/community/cra/cra_outstanding_needs_improve.pdf.

[11] *See*, John Taylor and Josh Silver, *The Community Reinvestment Act: 30 Years of Wealth Building and What We Must Do to Finish the Job*, p 6, http://www.frbsf.org/publications/community/cra/cra_30_years_wealth_building.pdf.

[12] Id.

[13] *See*, Richard D. Marsico, *Articles, Essays, and Summarized Remarks of the Panelists: Enforcing the Community Reinvestment Act: An Advocates Guide to Making the CRA Work For Communities*, 17 N.Y.L. Sch. J. Hum. Rts. 129, at 166 (2000).

[14] *See*, Richard D. Marsico, *Shedding Some Light on Lending: The Effect of Expanded Disclosure Laws on Home Mortgage Marketing, Lending, and Discrimination in the New York Metropolitan Area*, 27 Fordham Urb. L.J. at 487, 525-526 (1999) (measuring the impact on lending of the Home Mortgage Disclosure Act).

Quantitative measures should require separate analyses of both a financial institution's loan purchases and loan originations and its prime and subprime lending. Separate analyses of loan purchases and loan originations would make it difficult for a financial institution to manipulate a CRA exam by buying loans made to LMI borrowers immediately before that exam.[15] Separate analyses of prime and subprime lending would ensure that a financial institution doing both types of lending offers a balanced product mix to LMI borrowers and communities.[16]

Quantitative measures should also require a financial institution to compare its prime and subprime lending record to all lenders in its area. Such comparison would enable it to determine if its loans in an LMI neighborhood do more harm than good.[17]

If an ultimate CRA goal is promoting community development, the CRA should assess whether it has achieved that goal.[18] Incorporating the above quantitative measures should enable the CRA to make that qualitative assessment.

Respectfully,

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[15] Supra note 10.
[16] Id.
[17] *See*, supra note 12, at 167.
[18] *See*, John Olson, Prabal Chakrabarti & Ren Essene, *A Framework for Revisiting the CRA*, p 6, http://www.frbsf.org/publications/community/cra/framework_revisiting_cra.pdf.