

RESCINDED



Office of Thrift Supervision
Department of the Treasury

Director

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October 17, 1994

**TO THE CHIEF EXECUTIVE OFFICER OF THE SAVINGS ASSOCIATION
ADDRESSED:**

The Federal financial regulatory agencies have reissued for comment the proposed Community Reinvestment Act (CRA) regulations after making substantial changes to the proposal published in December 1993. The revised proposal was published in the Federal Register on October 7, 1994. See 59 Fed Reg 51232 (1994). The comment period will close on November 21, 1994. Enclosed are a copy of the revised proposal for your consideration and a staff summary of the key aspects of the proposal.

OTS received 843 comment letters on the December proposal, 197 of which were from thrifts. I appreciate the thought and analysis that was contained in those comment letters. I believe that this revised proposal addresses the significant issues raised in the comment letters and represents a better approach to the CRA evaluation process overall.

The basic framework for assessing an institution's CRA performance in this revised proposal has many of the same elements as the December proposal. Retail institutions would be assessed under lending, investment and service tests. Wholesale or limited purpose institutions would be assessed under a community development test. Small institutions would be assessed under a streamlined examination. All institutions would have the option of being assessed under a strategic plan.

The revised proposal differs from the December proposal in several ways:

- o Data collection would be simplified and reporting burdens reduced. The revised regulation would not establish new reporting systems for home mortgage or consumer loans. Small business and small farm loan reporting would be simplified to conform with existing Thrift Financial Report information. For small business and farm loans, thrifts would also report race and gender information on the owners of the business or farm, geographic location, and an indication of whether the business or farm had less than \$1 million in gross annual revenues.
- o The lending test would include a variety of quantitative and qualitative factors in lending assessments. Calculation of an institution's market share of loans to low- and moderate-income areas would no longer be required, although analysis of an institution's share of loans to low- and moderate-income areas and individuals would be used where appropriate.

- o The service test would consider a range of services, including branch location, branch closings, services offered at branches, and community development services.
- o Wholesale and limited purpose institutions would be evaluated under a new community development test.
- o OTS's December 1983 proposal did not contain any provisions for thrifts that consider themselves to be wholesale and limited purpose institutions. We received a few comments arguing that such thrifts, in fact, exist and we have added these provisions to the OTS version of the revised proposal.

While we are interested in your views on all aspects of the revised proposal, there are several issues that we would encourage you to address in your comments. First, we are interested in your comments regarding the assessment context outlined in the revised regulation and the modified lending, investment and service tests as they relate to the assessment context.

In addition, we invite your comments regarding the provisions in the revised proposal that would collect race and gender data for small business and small farm loans in order to support the fair lending component of the CRA assessment. This requirement raises several issues. The collection of race and gender data on these loans is currently prohibited under Regulation B, which implements the Equal Credit Opportunity Act (ECOA). The revised proposal's requirement to collect this data would exempt certain banks and thrifts from the Regulation B prohibition. The data may be very useful to these banks and thrifts as part of their efforts to self-assess their lending practices and ensure nondiscriminatory treatment of loan applicants. The data should also be useful information for examiners conducting the fair lending segment of a compliance examination. Other lenders, however, would still be prohibited from collecting this data. I am very interested in your views on the uneven application of Regulation B resulting from the revised proposal and, more generally, on the use of the limited information that we would require under this data collection.

I look forward to receiving your comments on the revised proposal.

Sincerely,

Jonathan L. Fiechter
Jonathan L. Fiechter
Acting Director

Enclosures

OTS STAFF SUMMARY OF REVISED CRA PROPOSAL
(October 1994)

I. Assessment Methods

The revised proposal, like the December proposal, recognizes the diverse nature of financial institutions and the communities they serve by establishing alternative assessment methods for institutions of different sizes and business orientations.

Large retail-oriented thrifts would be subject to the lending, service and investment tests. Examiners would assess the performance of these thrifts in the context of the demographics and credit needs of their service areas, the institution's product offerings, business strategy, capacity, constraints, past performance, and the performance of similarly-situated institutions. Examiners, rather than the institution, would develop the data regarding service area demographics and credit needs.

Community development loans and services are included in the lending and service tests for retail institutions. Community development loans and services are defined as loans or services that address affordable housing or other community economic development needs not met by the private sector primarily benefiting low- or moderate-income individuals, or businesses or farms that qualify as small businesses under Small Business Administration programs. Community development loans, other than multi-family loans, cannot be otherwise reported as a home mortgage loan, small business or small farm loan, or consumer loan.

Wholesale or limited purpose institutions would be evaluated on the basis of a new community development test. This test incorporates community development loans, investments or community development services that primarily benefit low- or moderate-income individuals, businesses or farms with annual revenues under \$1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program and address affordable housing (including multifamily rental housing) or their community economic development needs not being met by the private market.

A small institution would be evaluated on its loan to deposit ratio, (taking into account seasonal variations and other lending-related activity, as appropriate), the percentage of loans made within its service area, its record of lending to individuals of different income levels and businesses and farms of different sizes, the geographic distribution of its loans, and its record of action (if warranted) in response to written

complaints regarding its CRA performance. Small institutions are defined as thrifts with total assets less than \$250 million or that are under \$250 million in assets and affiliated with a holding company with total banking and thrift assets of less than \$250 million.

A strategic plan option would be available to all institutions, regardless of size. Plans may have terms of up to five years with measurable annual goals. An institution with multiple service areas could prepare a single plan for all of its service areas or separate plans for one or more service areas. Affiliated institutions could prepare joint plans.

Public participation in strategic plan development would be encouraged through informal suggestions the institution would solicit during initial development, formal public comment following notice by the institution, and submission of the plan as revised in light of public comments, along with those comments, to the regulator for approval.

II. CRA Ratings

Under any of the proposed assessment standards, banks and thrifts would be assigned overall composite ratings of outstanding, satisfactory, needs to improve, or substantial noncompliance. Retail institutions subject to the lending, investment, and service tests would be assigned subratings of outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance on each of the tests.

Overall composite ratings for retail institutions would be assigned in accordance with several guiding principles: (1) the lending test would count for at least 50 percent of the overall composite rating; (2) an "outstanding" rating on the lending test would result in an overall composite rating of at least "satisfactory"; (3) an "outstanding" rating on the lending test and at least one other test would result in an "outstanding" composite rating; (4) a "high satisfactory" rating on the lending test and "outstanding" ratings on the other two tests would result in an composite rating of "outstanding"; (5) a composite rating of satisfactory would require a rating of at least "low satisfactory" on the lending test; and (6) the rating system would increase the importance of the service and investment tests so that the effect of these tests on the overall rating would no longer be limited to situations in which an institution had extraordinarily strong or weak performance on one of the tests.

Evidence of discriminatory or other illegal credit practices would adversely affect the evaluation of a thrift's overall performance. In determining the effect, the regulator would consider the extent of the evidence of discrimination, policies and procedures in place to prevent discrimination, and

corrective actions taken by, or agreed to by, the institution -- particularly voluntary corrective action following self-testing or self-assessment.

Following two successive ratings of no better than needs to improve, an institution that would otherwise receive a "needs to improve" rating would be assigned a rating of substantial noncompliance.

III. Data Collection and Reporting Requirements

Institutions would be required to collect and report new lending data, but data reporting would be substantially simplified compared to the December proposal. Small institutions would continue to be exempt from additional reporting burdens.

The revised proposal would not require separate CRA reporting of home mortgage loan applications, originations, and denials. Home Mortgage Disclosure Act (HMDA) data would be used for analyses of an institution's home mortgage lending and HMDA data would be expanded to require, for large institutions, the location of loans made for property located outside an MSA. In addition, the Board of Governors of the Federal Reserve System is proposing to amend Regulation C (Home Mortgage Disclosure) to require institutions that are large banks and thrifts under the proposed CRA regulations to report information on loans and loan applications relating to property outside the MSAs in which the institution has a home or branch office. Currently, such reporting is optional.

Data would be collected on small business and small farm loans by loan size. Those data would include information only on those small business and farm loans currently tracked for reporting on the TFR and call report. Data would be reported to the agencies in loan registers that would include outstanding balance, location of the business, whether the business was more than fifty percent owned by minorities or women, and whether the business had fewer than \$1 million in gross receipts during the previous year.

Unlike the December proposal, new consumer loan reporting would not be required. At its option, an institution could collect consumer loan data, including automobile and credit card loan data, for analysis by examiners at the time of an examination. Institutions would report data on the number and amount of community development loans outstanding.

IV. Service Area Designation

An institution would have latitude in delineating its service area(s) so long as the service area did not reflect illegal discrimination and did not arbitrarily exclude low- and moderate-income geographies. For a retail institution, a

service area would be required to include those geographies in the local area around its branches and deposit taking ATMs in which the institution has originated or had outstanding a significant number and amount of loans and other geographies equidistant from its branches and ATMs, and could not extend substantially across MSA boundaries or state boundaries unless located in a multistate MSA.

For wholesale and limited purpose institutions, a service area would be the local area or areas around its offices or a broader statewide or regional area that includes the local area or areas.

V. Expanded Definitions

The new proposal modifies the definitions of low- and moderate-income geographies in response to concerns raised by commenters that the December proposal set economic standards that were too low for high cost areas of the country. Using adjustments made by HUD, the agencies would modify qualifying income levels to reflect prevailing housing construction costs and make available annually a list of qualifying income levels by geographic area.

The new proposal defines community development loans and clarifies that loans that fill a void left by the ordinary operation of the private market would qualify for favorable consideration. The definition recognizes the nature of consortia and lending programs that would produce qualifying loans and provides that an institution would receive favorable consideration for community development loans if they were in the institution's service area or in a broader region that encompasses the institution's service area.

Qualified investments are defined in the new proposal as investments in organizations and initiatives that foster community development. These investments could include investments in community development financial institutions (CDFIs), small business investment companies (SBICs), specialized small business investment companies (SSBICs), projects that qualify for low-income housing tax credits and other investments specifically targeted to finance affordable housing or community development, such as local, state or municipal housing authority bond issuances.

VI. Public Disclosure

Data collected for all institutions under the Home Mortgage Disclosure Act (HMDA) would still be made public by the Federal Reserve Board. CRA performance evaluations under the new evaluation standards would be made public by the institutions and their regulators. Large institutions would also disclose

summary data on small business and farm loans, community development loans, and, if the institution has chosen to collect it, consumer loans, in their public CRA files.

The revised proposal, like the December proposal, requires each regulatory agency to publish a list of CRA exams scheduled in each calendar quarter at least 30 days before the beginning of the quarter, but deletes language permitting members of the public to submit comments about a thrift's CRA performance. Language elsewhere in the regulation establishes the provisions concerning public comment.

VII. Public File

The revised proposal would require institutions to include with their CRA Notice a statement of what is included in the public file. The revised proposal retains all of the public disclosure provisions outlined in the December proposal. Additionally, it would require that the public CRA file include a map identifying the institution's service area, a list of branches and ATMs in its service area, and a list of services provided at each location.

VIII. Transition Period

A transition period would be established that would provide institutions with up to 18 months before assessments under the proposed standards would be mandatory. Transitional examination procedures would be implemented shortly after the promulgation of a final rule and would remain effective until July 1, 1996. Assessments under the proposed lending, service and investment tests would be mandatory beginning July 1, 1996. Data collection would begin July 1, 1995 or six months after publication of a final rule, whichever is later. Small institutions would have the option to choose assessment under the small institution assessment standards anytime after July 1, 1995. An institution could submit a strategic plan for approval beginning July 1, 1995.

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