

Neighborhood Reinvestment Corporation



DRAFT

September 15, 2004

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Subject: **RIN number 3064-AC50**
Comment Letter Regarding Community Reinvestment

Dear Mr. Feldman:

In accordance with the request for comments regarding the FDIC's Notice of Proposed Rulemaking regarding the Community Reinvestment Act (CRA) as published in the Federal Register on August 20, 2004, I respectfully submit the following comments for consideration in my capacity as Chief Executive Officer of the Neighborhood Reinvestment Corporation

Background Information Regarding the Neighborhood Reinvestment Corporation:

The Neighborhood Reinvestment Corporation is a public nonprofit corporation established by an act of Congress in 1978 (P.L. 95-557).

Neighborhood Reinvestment's mission is to strengthen distressed urban, suburban and rural communities across America, through a national network of local community-based partnership organizations composed of community residents, private sector and local government entities – known collectively as the NeighborWorks® network.

In pursuing its mission, Neighborhood Reinvestment:

- provides technical assistance, training, information services and other resources and funding (that is leveraged many times over by private sector funding) to its affiliated NeighborWorks® network members, and also provides training, information services and other resources to the broader community development industry;
- coalesces public and private support for local, regional and national community-based lending and community reinvestment efforts;
- contributes to public policy discussions concerning affordable housing lending and other means of transforming communities and improving the lives of lower-income families; and
- monitors changes in the field, assesses the need for new approaches, and initiates research or programmatic initiatives to address those needs.

The NeighborWorks® network founded by Neighborhood Reinvestment has evolved to an impressive network of 230 locally-directed nonprofit organizations working to expand affordable housing opportunities and

support community revitalization efforts in more than 2,500 communities across the United States -- in 49 states, the District of Columbia and the Commonwealth of Puerto Rico. NeighborWorks® organizations operate in our nation's largest cities and in some of its smallest rural communities. In FY 2004 alone, the NeighborWorks network will generate more than \$2.2 billion in direct reinvestment in distressed communities across the nation.

The following comments are informed by our experience in working with these local NeighborWorks® organizations and their local, regional and national lending partners.

Comments Regarding the Proposed Rule:

Since its creation in 1977 the Community Reinvestment Act has prompted federally-regulated financial institutions to use their resources and creativity to develop 'revolutionary' innovations in lending, investment and services – as evidenced by literally hundreds of billions of dollars in lending activity in low- and moderate-income communities across the United States.

In the face of such success, some have suggested that CRA has accomplished its purpose and is no longer as necessary as it once was. That its time has passed.

Our experience in low- and moderate-income communities across America tells us that the original goal of CRA -- to ensure that lenders are adequately addressing credit needs in all communities -- should continue to be a significant concern of the federal financial regulators.

In the 1970's, CRA was focused on the fact that few loans were being made in low-income communities. Today, the problem confronting these same communities is that there is an over-abundance of capital flowing. But much of this capital is in the form of 'bad loans', often with outrageous interest rates and unreasonable fees. While the most abusive lending practices are being carried out by institutions not currently subject to supervision by the federal regulatory agencies, the harsh reality is that a niche has been created permitting these abusive practices to thrive, because federally-regulated lenders have not adequately met the lending and credit and financial service needs of these communities.

Our affiliated NeighborWorks organizations are experiencing a huge increase in the number of consumers seeking assistance after they have fallen victim to predatory lending tactics, such as home refinance with excessive fees that strip the homeowners of their hard-earned equity or tax-refund anticipation loans that charge exorbitant interest rates and fees.

In many communities served by our affiliated NeighborWorks organizations, two distinctly different lending and financial services markets have evolved – with the people who can least afford it, paying the most for loans and other financial services.

In my view, CRA is still very much needed. Yes, CRA should be modernized. But it should be modernized to not only reduce the regulatory burden on financial institutions, but to maintain its ability to hold rapidly changing financial institutions accountable to the communities in which they operate. CRA should be streamlined and modernized in response to changes in the industry – but not weakened.

Changing the definition of "small bank" to raise the asset size to \$1 billion:

It would be wonderful, if anyone really knew what the impact of this proposed change in asset size to \$1 billion would be. On one end of the spectrum, some claim that virtually all current CRA-qualifying lending, investment and service activity would cease. On the other end of the spectrum are those that claim that absolutely nothing would change in terms of bank lending practices. The reality is that the 'truth' is

somewhere in between, and no one in the world really knows what will result from this change in definition. And that seems to be an incredibly large risk to take.

It is absolutely clear that CRA has played *some* role in encouraging lenders to lend and contribute to activities they may not otherwise have become involved with. And, the reasonable assumption is, that without the continued motivation provided by CRA there will be *some* decrease in lending and contributions that support NeighborWorks-type activities -- and a general decrease in lender support for lending, investment and services in lower-income inner cities and rural communities

The irony is that most of the CRA-qualifying activities of the very large institutions (those with assets above \$1 billion) would probably not be affected very much with or without CRA. While CRA was very important years ago in initially encouraging those institutions to become involved with CRA-related activities, for the most part the institutions have had positive experiences in reaching out to traditionally underserved households and communities, and their CRA-related activities would likely continue – driven more by fierce competition and their drive for market share, than CRA considerations.

Many of the smaller institutions however are in communities that have fewer institutions to begin with, resulting in less competition and a much lower drive among those institutions for market share – and a lower appetite for CRA-qualifying activities. CRA clearly continues to be a significant motivator to the smaller institutions.

Many of our affiliated NeighborWorks[®] organizations have developed strong partnerships with these small- to medium-sized institutions, and our affiliates have expressed concern about the future of these relationships if the proposed CRA changes were enacted. The issue is particularly relevant for organizations serving rural communities and small towns. NeighborWorks organizations have spent many years cultivating their partnerships with the small- to medium-sized financial institutions, and they are concerned that the proposed rule could allow their financial institution partners' interests in community reinvestment to fade, and negatively affect low-income families and communities.

In 2003, our affiliated NeighborWorks organizations received approximately \$17.42 million in contributions from banks and thrifts, and generated nearly \$2 billion in direct investment in communities across America.

If the \$1 billion threshold were applied, 38 percent of the banks and thrifts that currently contribute to the NeighborWorks network would no longer be subject to full CRA examinations – and perhaps no longer have any CRA-influenced motivation to continue to contribute or invest in NeighborWorks communities.

If financial institutions interpret this change in definition to represent a reduction in the commitment of the regulatory agencies to monitor their performance under CRA, communities could potentially lose billions in capital annually that has historically been stimulated by CRA.

I would therefore urge that the FDIC not change the definition of "small bank" to raise the asset size to \$1 billion.

Specific recommendations:

If the FDIC wants to remove a significant level of record-keeping, reporting and examinations associated with CRA while still maintaining the current level of CRA-type lending and investment, I would urge consideration of the following recommendations.

- 1. Phase-in any increase in the asset level over several years.**

While reasonable people may disagree on what the appropriate asset level should be, I don't understand the incredible 'rush' to increase the asset level to \$1 billion in a single step. Recognizing the risk that CRA-type lending, investments and services could potentially be decreased by lifting the asset level, it seems reasonable to deal with any increase incrementally, over a period of years. Given that the current level is \$250 million, I see absolutely no down-side to phasing in any increase in increments of \$250 million per year.

Current level:	\$250 million
Phase 1 increase, to:	\$500 million
Phase 2 increase, to:	\$750 million
Phase 3 increase, to:	\$1 billion

During this period, the FDIC and other financial regulators should evaluate, evaluate, evaluate whether there has been any appreciable impact on lending, investments or services and respond appropriately to any such changes. This approach would also provide time for the FDIC and other federal financial regulators to, hopefully, reach agreement regarding the asset definition and other CRA-related regulations – hopefully, avoiding the potential of having three or four different CRA-related regulations governing the nation's banks and thrift institutions.

2. Use current/past performance to establish a "CRA baseline level"

One way in which the FDIC might evaluate CRA-related performance during this "phase-in" period would be to establish the current level of CRA-related lending and investment reported individually by each institution, and cumulatively by all federally-regulated institutions, as a "CRA baseline level". The FDIC should establish a policy that essentially creates a safe-harbor for institutions that continue to meet or exceed the "CRA baseline level" for their institution. As long as they meet their 'baseline' (as reported through a greatly reduced self-reporting instrument) the institution would not be subject to the full requirements of CRA reporting. But, the failure of any individual institution to meet their 'CRA baseline level' would trigger a requirement that they must once again report under CRA and be subject to a full CRA-type examination.

Further, the FDIC should announce that as long as the entire field of federally regulated institutions met the cumulative 'baseline' established for all institutions, the phased-in/incremental increase in asset level (and this safe-harbor approach) would continue. But if there were a significant erosion in the level of CRA-qualifying lending and investment activity being carried out by regulated lenders, the incremental increase in asset level (and safe-harbor approach) would be eliminated and institutions with assets above \$250 million (or whatever the new asset level was at that point) would once again be subject to full CRA reporting and examination.

Clearly, for this type of approach to work, some reasonable annual adjustment to the baseline numbers would need to be made to reflect the impact of mergers, market changes, etc.

3. Add a community development activity criterion:

Although I believe it is a mistake to raise the asset level so precipitously (from \$250 million to \$1 billion), if the asset level is increased, I would support the addition of the proposed community development criterion.

I question, however, the specific proposal published by the FDIC which would require mid-size banks (with assets between \$250 million and \$1 billion) to engage in only one of three qualifying activities: community development lending; investing; or services. Under current CRA regulations, a mid-size bank is evaluated based upon their performance in all three areas. I believe it is important to continue to require some reasonable level of involvement in each of the three qualifying activities in order to encourage banks to maintain the level of lending, investment and services needed within low- and moderate-income communities. At a minimum, a heavier emphasis should be placed on the institution's CRA-type lending activity.

4. Maintain some level of business lending data reporting for mid-size banks.

While I am sure it is possible to simplify the current business lending data reporting requirement, I believe it would be a real mistake to totally eliminate the reporting of business lending data. It is important to recognize that banks and thrifts are not just another 'business'. They receive significant benefit from the federal government (ultimately, from tax-payers) as well as from their depositors. And, as such, they should provide a level of disclosure and accountability to tax-payers and depositors. Such accountability is dependent on adequate data. And the cry about the "administrative burden" imposed by such data reporting requirements seems to be a classic red-herring. This type of data is absolutely critical for internal bank management purposes, and modern technology/computerization surely eliminates any significant 'burden' involved in maintaining and reporting such data.

5. Community development activities in rural areas

While I applaud the FDIC's effort, through the proposed rule, to encourage additional community development activities in rural areas, I question the specific proposal that would permit such community development activities in rural areas to benefit any group of individuals -- rather than require that the needs of low- and moderate-income individuals in rural areas be met. One approach that would recognize all community development activities in rural areas, while still encouraging banks to meet the needs of low- and moderate-income individuals, would be to provide some type of "bonus points" for community development activities specifically targeted to low- and moderate-income individuals in rural areas (similar to the "bonus point" approach previously associated with the GSE affordable housing goals).

6. Definition of Rural Areas

The proposed rule asks for comment on whether a definition of "rural" would be helpful, and if so, how that term should be defined. My recommendation would be that, for the purposes of this rule, "rural" be defined as including any geographic area and/or property that would be eligible for any services provided by the Farmer's Home Administration (FmHA).

Conclusion:

I appreciate the challenges involved in developing regulations that keep pace with the significant changes that have taken place in the financial services industry, but I ask that you carefully balance industry calls for reform with the needs of underserved communities and households across America.

Clearly, the Community Reinvestment Act has been a vital element in stimulating community reinvestment across America, and it would be tragic if decades of progress were negated by the wrong decision regarding this proposed rule.

I thank you for your consideration of these comments and for your efforts to reach a reasonable definition of "small bank". Please feel free to contact me (at 202-220-2410 or by email at kwade@nw.org) or Steven Tuminaro, Director, Public Policy and Legislative Affairs (at 202-220-2415 or by email at stuminaro@nw.org) with any questions or concerns you may have regarding these comments.

Sincerely,

Ken Wade
Executive Director

