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Subject: Docket No. 2001-49

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October 16, 2001

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2001-49

To Whom It May Concern:

The Metropolitan Milwaukee Fair Housing Council (MMFHC) believes that the Community Reinvestment Act (CRA) has been instrumental in increasing lending and investing in our community and many others around the country. The regulatory changes to CRA in 1995 strengthened the law by emphasizing a bank's performance in providing services and making loans and investments. MMFHC is, therefore, asking the federal banking agencies to update the CRA regulations in order to further reinvestment in low- and moderate-income communities, as well as underserved minority communities.

The results of the positive changes to the CRA regulation in 1995 have been significant. The Department of Treasury's study on CRA found that lending to low- and moderate-income communities is higher in communities located in a bank's CRA assessment area, than in communities that are not examined under CRA. Here in Milwaukee, WI, CRA has made possible a wide variety of projects, including single family and duplex in-fill developments like the Beauchamp Townhomes, multifamily rental developments like King Heights, and commercial revitalization in our downtown, and near north, south and west side neighborhoods.

To preserve the progress in community reinvestment, we strongly urge the federal banking agencies to update CRA respective to the revolutionary changes in the financial industry. ~~The Gramm-Leach-Bliley Act of 1999~~ allows mergers among banks, insurance companies, and securities firms. Banks and thrifts with insurance company affiliates are now aggressively training insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage company affiliates of banks continue to make a significant portion of the total loans, often issuing more than half of a bank's loans. Although the CRA is currently powerless in

these types of transactions, these transactions have serious impact on low- and moderate-income communities, the communities the CRA seeks to serve.

The CRA regulation currently allows banks to choose whether or not the lending, investing, or service activities of their affiliates will be considered on CRA exams. Additionally, the banks can pick and choose which affiliates they wish to include, and which ones they do not want included as part of their evaluation. MMFHC urges the regulatory agencies to mandate that all lending and banking activities of non-depository affiliates and

subsidiaries be included on CRA exams. This change would allow a more accurate assessment of banks' CRA performance. That way, if an institution is spreading its lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers, all of those entities would be included in the institution's evaluation.

Ending the optional treatment of affiliates stops the manipulation of CRA exams and makes exams more consistent in their scope. Currently, banks can elect not to include affiliates on CRA exams if they make predatory loans or if they make loans primarily to affluent customers.

The CRA procedures for delineating assessment areas also need to be changed if CRA is to adequately capture the activities of banks in the rapidly evolving financial marketplace. Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Banks are increasingly using brokers and other non-branch platforms to make loans. As a result, CRA exams of large, non-traditional banks scrutinize a tiny fraction of bank lending. This directly contradicts the CRA statute's purpose of ensuring that credit needs in all the communities in which a bank is chartered are met. MMFHC believes that the CRA regulations must specify that a bank's CRA exam will include more of the communities where banks are soliciting and making loans.

If CRA exams hope to keep pace with the changes in lending activity, MMFHC strongly believes that CRA exams must rigorously and carefully evaluate subprime lending. The CRA statute clearly states that lenders have an affirmative obligation to serve communities in a safe and sound manner. CRA exams must be conducted concurrently with fair lending and safety and soundness exams to ensure that lending is conducted in a non-discriminatory and non-abusive manner, safe for both the institution and the borrower.

MMFHC applauds a recent change to the "Interagency Question and Answer" document stating that lenders will be penalized for making loans that violate federal anti-predatory statutes. This Question and Answer must become part of the CRA regulation to protect low- and moderate-income borrowers.

MMFHC believes that lenders should be encouraged to make as many prime loans

as possible, since prime loans are more affordable, increasing access to capital for minority and low- and moderate-income borrowers.

Significant research concludes that too many creditworthy borrowers are receiving over-priced and discriminatory subprime loans. CRA exams should provide an incentive to increase prime lending. MMFHC proposes that lenders that make both prime and subprime loans should not pass their CRA exams unless they pass the prime part of their exams.

MMFHC strongly suggests the CRA regulations be changed so that minorities are explicitly considered on the lending test, just like low- and moderate-income borrowers. Considerable research has revealed the domination of subprime lenders in refinance and home equity lending in minority communities. This lopsided market confronts minorities with few alternatives to high cost refinance lending. If minorities were an explicit part of the lending test, CRA exams should stimulate more prime lending in communities of color.

MMFHC is aware that segments of the banking industry likely will seek to weaken the CRA regulations and examinations. They may ask for the elimination of the investment test on large bank exams. They could also urge that more banks be allowed to qualify for the streamlined small bank exam and for the streamlined wholesale and limited purpose exam. But, MMFHC strongly opposes the elimination of the investment test since low- and moderate-income communities continue to experience a shortage of equity investments for small business and other pressing economic development needs.

The present CRA exams are reasonable and are not burdensome for banks. Allowing more banks to qualify for streamlined exams will likely result in a weakened CRA enforcement.

We urge the regulatory agencies to adopt these additional policies:

• Purchases of loans must not count as much as loan originations on CRA exams, since making loans is the more difficult task. The lending test must receive primary emphasis because redlining and "reverse" redlining, or predatory lending, remain serious problems in working-class and minority neighborhoods.

• The emphasis on quantitative criteria must remain in CRA exams. If the bank's "qualitative" or "innovative" programs produce a significant number of loans, investments, and services, the bank will perform well on the quantitative criteria. Banks should not receive an inordinate amount of credit for an "innovative" program or practice that does not produce

much in terms of volume.

• The Federal Reserve Board should enact its proposed HMDA reform to include information on interest rates and fees so that subprime lending can be assessed on CRA exams. The CRA small business data must include information on the race, gender, and specific revenue size of the borrower and the specific census tract location of the business.

• The service test should be enhanced by data disclosure regarding the number of checking and savings accounts by income level and minority status of bank customer and census tract. Payday lending is abusive and must not count on CRA exams. The cost of services should be a factor on CRA exams since high fee services do not meet "deposit" needs and strip consumers of their wealth and savings. The service test must award the most points to banks that provide a high number of affordable services to residents of low- and moderate-income communities.

• Low and high satisfactory ratings should be possible overall ratings, as well as ratings for the lending, investment, and service test of the large bank exam. Banks should be required to submit improvement plans subject to a public comment period if they have ratings of low satisfactory or below. Currently, banks are only required to submit improvement plans to their public file if they fail CRA exams.

• The Gramm-Leach-Bliley Act of 1999 prohibited banks with failing CRA ratings from expanding into the insurance and securities business. That provision of the statute should apply to the bank acquiring another institution, as well as a bank being acquired. The Federal Reserve Board's interpretation of this provision allows a bank failing its CRA exam to be acquired by another institution. Under the Board's interpretation, a bank has little incentive to abide by CRA obligations if their chief executives and board are contemplating a sale of their bank.

MMFHC believes that our suggestions for updating the CRA regulation will produce CRA exams that are rigorous, performance-based, more consistent and better able to capture the lending, investment and service activity of rapidly changing banks. The implementation of these recommendations will substantially contribute to enhanced enforcement of CRA.

This review of the CRA regulations is a welcome opportunity for all involved parties to comment on CRA regulation changes. As a result, we urge the regulatory agencies to hold hearings around the country when they propose

specific changes to the CRA regulation. It is vital that the federal banking agencies hear the diverse voices of America's communities as they consider a regulation that ensures that community credit needs are met.

Thank you for your consideration.

Sincerely,
William R. Tisdale
President and CEO
Metropolitan Milwaukee Fair Housing Council

cc: Congresswoman Tammy Baldwin
Congressman Thomas Barrett
Congressman Jerry Kleczka
Senator Russell Feingold
Senator Herb Kohl