

April 5, 2002

John D. Hawke, Jr.
Comptroller of the Currency
Office of the Comptroller of the Currency
Independence Square
250 E Street, SW
Washington, DC 20219-0001

Dear Jerry,

This responds to your challenge to NAAHL to develop a proposal for updating the CRA regulation. By way of background, the 3 principles underlying NAAHL's approach to CRA and Community Development and informing this proposal are:

Sustainability: No loan or investment should be made which is not viable in its own right – meaning that it can achieve its developmental purpose over time without continued sustaining financial intervention. However, a comprehensive community development (CD) strategy will include grants and other types of financial assistance to low- and moderate-income (LMI) individuals and organizations.

Flexibility: The key to what is allowable and creditworthy under CRA should be “what works”, i.e., what loans, investments, and services contribute to improvement in the lives of LMI individuals.

Responsiveness to community/market needs: Banks should be able to create, change, and modify their CRA oriented programs to reflect changed conditions in their markets and communities. Examiners should recognize such changes in community and market conditions and reward CRA programs that work.

The Community Development Oriented Plan:

As an option (not dissimilar to the choice available with the “Strategic Plan”), a bank could choose as an alternative to the standard Lending, Investment, and Service Tests, to be assessed under two new tests which differentiate between the community reinvestment responsibility to provide financial services to the institution's assessment community on the one hand, and the narrower but pressing need to assist LMI individuals and/or revitalize the communities within which they live or work. These alternative tests would be:

- Retail Banking Test – consisting of mortgage loans, small business loans, consumer loans (optional), and retail banking services. This would be similar in scope to the existing small bank test.
- Community Development Test – consisting of community development lending, community development investments, and community development services.

The Retail Banking Test will measure the institution’s success in meeting the credit and financial service needs of its assessment area. These activities (whether lending or services) will be included in the Retail Banking Test as a component of the institution’s assessment area activity and to ascertain the institution’s distribution of these activities within the assessment community.

The Community Development Test -- Definition and Purpose:

Community Development encompasses those activities of a financial nature or otherwise, which have the effect of improving the life condition of LMI individuals, or of stabilizing and revitalizing the communities in which they live or work. In order to receive community development credit for CRA purposes, a project need not have community development as its “primary purpose”, so long as a significant consequence of the project or activity benefits LMI individuals or communities. For example, all of a mixed-income development transaction where the market-rate units *enable* affordable units should count (not just the affordable portion) because the transaction meets the community’s need for LMI housing. Another example is a city-sponsored project in a community, which is not LMI, where the institution finances or supports downtown revitalization or rehabbing of an older shopping center where LMI individuals are likely to find employment. In addition, it should not be required that an activity be explicitly “financial” if it works to the benefit of LMI individuals or communities.

The Community Development Test will include, but not be limited to, activities such as the following:

- Funding of CDFIs and other community development intermediaries;
- Funding community development venture capital funds;
- Loans/investments/grants in projects or to organizations which provide housing affordable to LMI individuals, or to LMI communities;
- Loans/investments/grants in projects or to organizations which provide jobs, supportive services, or other relevant benefits to LMI individuals or LMI communities;
- Facilitating the creation of affordable housing through the use of low income tax credits;
- Purchase of mortgage-backed-securities backed by loans to LMI individuals;

Participation in government sponsored programs, such as the SBA, with evaluation based on the LMI definition that the specific government entity uses;

Grants to organizations engaged in community development activities;

Providing financial education and banking services tailored to the needs of the unbanked;

Equity investments in organizations, small businesses, or other projects for the purpose of community development;

The initiative shown by the institution in developing unique/special LMI targeted lending programs; and

Related activities such as:

- Providing standby letters of credit or other credit enhancements supporting community development projects (to be included and itemized in the CRA Loan Disclosure);
- Applications to the Federal Home Loan Bank for support of community development projects, the contingent liability taken on with such projects, and employee time spent in administering and monitoring these activities;
- Employee time devoted to a large variety of community development activities, such as construction of homes through the auspices of organizations such as Habitat for Humanity;
- Bank officers and other employees participating in community development organizations, even if they include non-financial activities.

When examining an institution's community development program, the Examiner would look to the totality of the bank's community development activity, recognizing that the balance among community development lending, investments, services and other related activities may vary substantially from bank to bank and community to community so long as the total impact of the bank's community development outreach is consistent with its performance context and institutional expertise, and meets a reasonable standard related to community needs.

Weighting:

If an institution were to choose this alternative plan for satisfying its community reinvestment responsibility the weighting for each test would be agreed upon prior to the examination, with the weighting for the Community Development Test to be no lower than 25% and no higher than 50% of the total. In keeping with the overriding consideration of flexibility in the direction each institution takes in meeting its community development responsibilities and the flexibility Examiners have to evaluate the totality of an institution's program without rigid adherence to hard and fast allocations, we believe that weighting should be determined within the context of the individual institution's business strategy and the needs of its community. As an example, an institution which does not offer a

particular product line would be evaluated with weightings based on the products it does offer.

HDMA, Small Business, and (Optional) Consumer Loans:

HMDA and Small Business loans will continue to be reported as they currently are, and considered in the retail banking test. Standby letters of credit or other credit enhancements supporting community development projects will be reported and included under the Community Development Test, as noted above. There will be no double counting of loans, investments, or services. For examination purposes, all activities will be categorized as falling under the Retail Banking Test or the Community Development Test.

Determination of Which Test to be Examined under:

At the time when the Regulator notifies a bank of an upcoming CRA Examination, but no more than 12 months prior to an exam, the bank will inform the Regulator of its wish to be examined under the standard Lending, Investment, and Service tests, or its preference to be examined under the Retail Banking and Community Development tests. This flexibility allows that even though a bank might normally be expected to opt for and develop its CRA plans for one or the other of the alternate examination processes, changing bank circumstances and community/market conditions may prompt the bank to change its program in such a way as to make the alternative testing standard appropriate.

Thank you for the opportunity to suggest this approach. We would look forward to continuing our dialogue on these important matters.

Sincerely,

Judy Kennedy
President