NATIONAL

Why CRA Enforcement Needs to be Under the Jurisdiction of the Consumer Financial Protection Agency

The Obama Administration proposed the creation of the Consumer Financial Protection Agency (CFPA) as a new agency that would be responsible for further developing consumer protection and fair lending regulations, conducting examinations, and enforcing these regulations. Currently, four federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission share responsibilities for implementing the consumer and fair lending regulations. This authority would be transferred to the CFPA.

The Obama Administration proposed shifting the Community Reinvestment Act (CRA), along with the other consumer protection laws, to the CFPA. Last week, Chairman Frank of the House Financial Services Committee introduced H.R. 3126 (the Consumer Financial Protection Agency Act of 2009) that largely resembles the Obama Administration's proposal except that jurisdiction of CRA would remain with the existing federal bank agencies. The Administration was correct in their proposal to shift CRA oversight to the CFPA since the existing regulatory agency enforcement of CRA has been inconsistent and weak. Accordingly, NCRC urges the House Financial Services Committee to restore CFPA as the agency responsible for CRA oversight.

The National Community Reinvestment Coalition (NCRC) believes that CRA must be under the jurisdiction of the CFPA for the following reasons:

- **One Agency can Most Effectively Implement Consumer Protection and Fair Lending Laws** – Currently, the four agencies (Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and Office of the Comptroller of the Currency) are neither aggressive nor proactive in enforcing CRA because they compete against one another for supervision over institutions. By choosing which charter they want, lending institutions can literally choose which of the four regulatory agencies they want to supervise them. The regulatory agencies must compete to be the most attractive (meaning lax) regulators or risk losing lending institutions and their fees to other regulatory agencies. In fact, the Office of Thrift Supervision (OTS) broke away from the other agencies and implemented very watered down CRA exams for a two year time period. The other agencies felt compelled to also reduce CRA requirements for mid-size institutions in response to the OTS move. In contrast, the CFPA would not feel this pressure to be lenient since all institutions would automatically be subject to its regulatory authority.

- **The Current Agencies Have Weakened CRA Regulations –** The last time CRA regulations were strengthened was in 1995 as a result of a major initiative by the Clinton Administration. Since that time, the most significant regulatory actions on CRA have been weakening requirements for certain categories of banks. In particular, mid-size

banks with assets between $250 million to $1 billion now have relaxed CRA requirements that do not vigorously examine them for investment, service or branching activities. In addition, these banks no longer have to publicly report their small business and farm lending data by income level of census tract although these institutions are important small business lenders. Moreover, as the industry has undergone profound changes, the agencies have not updated CRA regulations to keep pace with financial sector innovation. As a result, the geographical coverage of CRA exams has shrunk to the point that CRA exams scrutinize only about a quarter of all lending activity across the country.

- **Agency Enforcement of CRA has been Weak –** Over the last several years only 1 percent to 2 percent of banks have failed their CRA exams. When CRA ratings first became publicly available in 1990, 10 percent of banks failed, and from 1990 to 1994, more than 5 percent of banks failed their CRA exams. While banks probably have improved performance, the extremely high pass rate is questionable. Academic studies have shown that exam methodology is inconsistent across the regulatory agencies and that ratings for the service component of the CRA exam are often inflated when a bank's performance on other parts of the tests place it in danger of failure. In addition, bank mergers provide opportunities for enforcement but of the 13,500 applications considered by the Federal Reserve Board since 1988, only 8 have been denied based on consumer protection or community needs issues. The agencies also rarely use their authority to impose conditions requiring specific CRA or fair lending improvements when they approve merger applications.

- **All Consumer Protection Laws, Including CRA, are Better Enforced if Moved to the CFPA –** The consumer protection and fair lending laws often reference and reinforce each other, meaning that a violation of one of the laws is also a violation of the other laws. In particular, a widespread fair lending violation results in a lower or failed CRA rating. If different agencies share responsibility to enforce CRA and the fair lending laws, they may not share the results of CRA and fair lending examinations with their counterparts in a timely manner, resulting in missed enforcement opportunities. In contrast, if the CFPA enforced both CRA and fair lending laws, the CFPA would be able to simultaneously enforce both sets of laws.

- **Don't Believe the Arguments Against Moving CRA to the CFPA –** Industry trade associations assert that CRA must remain with the existing agencies because the existing agencies will conduct safety and soundness exams and that CRA enforcement cannot be divorced from safety and soundless enforcement. In fact, the existing agencies will continue to conduct exams of the banks' overall capital adequacy and management, which were never safety and soundness components on CRA exams. Instead, CRA

exams scrutinize whether loans are abusive, illegal, and unsafe – a type of safety and soundness check that the CFPA will be well equipped to conduct. Furthermore, some industry trade associations assert that the CFPA will not have the expertise to promote community development financing. This is a specious argument. If the CFPA receives CRA jurisdiction, community development staff from the existing agencies will shift to the CFPA just as government staff has shifted in previous regulatory re-shufflings.