

October 22, 2010

Councilmember Richard Alarcon  
Los Angeles City Council, District 7  
City Hall, Rm. 470, Los Angeles, CA 90012

Date: 10-26-10  
Submitted in: 080  
Council File No: 09-0234  
Item No: 3  
Deputy: PUBLIC  
Deputy:

Dear Councilmember Alarcon:

It is with great pleasure that the National Community Reinvestment Coalition (NCRC) strongly supports your proposed bill to establish a Responsible Banking Investment Monitoring Program (CF 09-0234). Without lending and investment of financial institutions, neighborhoods will not be able to thrive economically. Public sector programs can “prime the pump” and spark investment, but by themselves they do not have the resources to successfully revitalize neighborhoods. With this in mind, your bill to increase responsible lending and investing in communities is critically important.

Your bill, if replicated in many cities and counties across the country, will help us democratize capitalism so that it responds to community needs, as articulated by the communities themselves. Your bill will help ensure that homeowners and small business owners that are working hard and playing by the rules can receive responsible loans. It is a sound principle embedded in your bill that in return for receiving municipal deposits (which represents the wealth of the community), banks have an obligation to directly serve all city residents in a safe and sound manner.

The Federal Community Reinvestment Act (CRA) has leveraged tremendous amounts of safe and sound loans and investments but it has not yet realized its full potential. For example, in Los Angeles during 2008, CRA-covered banks issued \$971 million in prime home loans to low- and moderate-income borrowers and made \$3.3 billion in loans to small businesses with revenues under \$1 million.

Despite these positive trends, significant disparities in lending by race remain, even for middle- and upper-income minorities. NCRC found that middle- and upper-income African-American women were 2.2 times more likely to receive high-cost loans than middle- and upper-income white women in Los Angeles. Likewise, middle- and upper-income Hispanic women were twice as likely as their white counterparts to receive high-cost loans.<sup>1</sup> Part of this disparity in access to affordable loans for minorities can be explained by less access to bank branches. In Los Angeles, NCRC found that predominantly white neighborhoods had one branch for every 3,677 people but that minority neighborhoods had one branch for every 7,956 people.<sup>2</sup>

<sup>1</sup> NCRC, *Assessing the Double Burden: Examining Racial and Gender Disparities in Lending*, June 2009, <http://www.ncrc.org/images/stories/pdf/research/ncrc%20nosheild%20june%2009.pdf>

<sup>2</sup> NCRC, *Are Banks on the Map: An Analysis of Bank Branch Location in Working Class and Minority Neighborhoods*, 2007, [http://www.ncrc.org/images/stories/mediaCenter\\_reports/ncrc%20bank%20branch%20study.pdf](http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20bank%20branch%20study.pdf)



addition, NCRC hopes that you will join us in promoting H.R. 6334, the American Community Investment Reform Act of 2010, which would strengthen the Federal CRA by bolstering enforcement mechanisms and broadening CRA coverage to include a variety of non-bank financial institutions including mortgage companies, hedge funds, and investment banks.

On behalf of NCRC's 600 community organization members working to increase access to responsible loans and investments for underserved communities, I thank you for your important initiative. We look forward to further collaboration.

Sincerely,

John Taylor  
President and CEO

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The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.





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October 22, 2010

Hon. Richard Alarcón  
Hon. Bernard Parks  
Hon. Paul Krekorian  
Committee on Jobs  
City of Los Angeles  
Room 395 City Hall  
North Spring Street  
Los Angeles, CA 90012

Date: 10-26-10  
Submitted in JBP Committee  
Council File No: 09-0234  
Item No.: 3  
Deputy: PUBLIC

Re: Responsible Banking Investment Monitoring Program (Council File No. 09-0234)

Dear Honorable Members:

The California Bankers Association (CBA) is writing this letter on behalf of its members, which are most of the FDIC-insured depository financial institutions doing business in the state of California. CBA is a non-profit organization established in 1891 and represents its members on matters that significantly affect the industry in California. CBA has reviewed two versions of the draft ordinance proposed by Councilmember Alarcón: the August 6, 2010 version submitted by the City Attorney's office ("Proposal") and an undated substitute draft. Because it appears that both versions have been circulated among Councilmembers, we wish to respond to both. Our comments pertain to both drafts, except that where a comment pertains only to one version, it will be indicated in parenthesis as either the (August Draft) or (Substitute Draft).

### **The Proposal is Seriously Flawed**

CBA believes the Proposal conflicts with state law governing the fiduciary responsibility of municipalities (as discussed further below), is on the whole unworkable, places a relatively larger compliance burden on smaller institutions, and creates legal uncertainties. If an ordinance is to be adopted, banks need a clear pathway to comply. But just a cursory review of the Proposal reveals serious flaws that, as a consequence, create legal uncertainties. Consider the following flaws:

- Credit unions are not subject to the CRA. Thus, not only would credit unions have no rating to report, their burdens of compliance would be elevated and they would be less

likely to compete for contracts. This undermines the presumed preference of the Proposal for smaller, local institutions.

- Bank underwriting standards should not be subject to local pressures, such as requiring banks to consider a borrower's unemployment insurance when modifying loans. Does the City of LA consider it an unsafe and unsound banking practice for a bank to consider a borrower's income that is known to expire in four months? In one month? Banks are subject to comprehensive regulatory supervision by state and federal banking agencies. Banks should not be placed in a position to risk supervisory criticism in order to do business with the City.
- Underwriting is a preempted activity for national banks and federal thrifts. The Proposal, or parts of it, would apply only to state chartered institutions.
- The Proposal distinguishes between home improvement loans and home equity loans, but there is no bright line between these categories. (Substitute Draft)
- A "non-occupant" loan has no standard meaning in the banking industry. (Substitute Draft)
- No definition is provided for what constitutes a "distressed" loan (Substitute Draft) or a "modification."
- Determining whether loan activity is "within" an assessment area is not routinely straight forward (non-LA resident borrower's business could be in LA or a LA resident's business could be outside of LA). Determining the location of an institution's "deposit base" is even more nebulous in the world of branch, telephone, internet, and mobile device banking. This is another reason why consulting existing CRA disclosures is sufficient and more accurate. (August Draft)
- "Foreclosed" properties and REO properties are not synonymous. At any rate the extent that an institution utilizes its legal remedies to resolve defaulted loans is too complex a factor to have a clear bearing on its suitability to provide banking services to the City. (Substitute Draft)
- The requirement for credit rate disclosures on consumer loans and credit lines, as drafted ("minimum, median, and maximum nominal and effective interest rates"), is a compliance impossibility and would require substantial, detailed work by the City before any institution can meaningfully comply with this provision. (Substitute Draft)
- On the basis of just the aforementioned uncertainties, it would not be feasible for City officials to apply the numerical ratings for purposes of comparing institutions.



### **Proposal Is Inconsistent With Cities' Fiduciary Duties**

With regard to cities contracting with financial partners in connection with carrying out their legally-prescribed fiscal responsibilities, we ask whether the nature and level of community activities are proper factors to consider. Government Code Section 53600.3 makes governing bodies of local agencies (or persons authorized to make investment decisions on their behalf) "trustees" and "fiduciaries" subject to the prudent investor standard. By law, their "primary objective" is "to safeguard the principal of the funds under its control." Their secondary objective is to "meet the liquidity needs of the depositor." The third objective is "to achieve a return on the funds under its control." (See section 53600.5). These are serious duties, as explained in Section 53600.6:

"The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern."

Nowhere in this statute is it contemplated that pursuing an unrelated policy objective such as making CRA activities traceable is consistent with an agency's fiduciary duties to safeguard principal, meet liquidity needs, and achieve a return on funds. If a city limits a number of banks from its eligibility list based on such unrelated criteria, does it not also limit its options when fulfilling its duties?

### **Proposal Is Unnecessarily Burdensome**

We understand and appreciate the sentiment behind the Proposal. The Councilmember wishes to maximize the leverage that the City has in approving contracts to secure economic and social benefits for its residents. The Proposal also apparently seeks to favor smaller, local financial institutions that primarily serve the City of Los Angeles. It is interesting to note that the Proposal implicitly acknowledges that the CRA, which all FDIC-insured depository financial institutions are subject to, virtually ensures that a large municipality such as Los Angeles does and will continue to benefit from substantial bank lending, services, and investments. (For example, the Proposal weighs, among other factors, an institution's latest CRA evaluation).

A significant concern that underlies the entire Proposal is the need for a bank contractor to *report* LA-specific activities, not *whether* banks adequately provide vital community services. It can hardly be refuted that banks and savings institutions have supported and complied with both the spirit and letter of the federal CRA for over three decades since its enactment in 1977. Among other things, this means that the vast majority of bankers today have never served in a banking organization that did not, as a matter of law and company principles, reinvest in the communities in which they do business. Today, even banks of modest size commit millions of



dollars in loans to individuals and small businesses in low to moderate income communities, as well as make grants, perform services, and engage in other community development activities. For decades, banks have established a record of benefiting communities above and beyond the ordinary course of business that cannot be matched by any other industry. No other businesses that cities do business with have similar commitments or statutory duties, nor come close to matching banks' record of reinvestment.

CBA cannot support the Proposal because it substantially increases regulatory burdens and thus makes it less likely for banks, especially smaller banks, to be able to meet the City's heightened demands. Compliance with CRA regulations already consumes enormous amounts of bank resources. Banks spend disproportionate amounts having to comply with the logistical requirements of the complex regulation in the form of tracing loans and investments, evaluating grant recipients for suitability, geocoding, training, documenting compliance, preparing for examinations, and producing reports. All of these costs come on top of making loans, investing, and performing services.

We understand that mandatory CRA-generated data and disclosures do not meet the tracking needs of individual cities. This is because banks are required to report and publish CRA data in the manner required by their regulators. Banks are examined and are expected to report CRA activities based on their assessment areas, which roughly correspond to the geographical areas in which they do business. For the most part, banks do not delineate assessment areas by political boundaries smaller than counties. A major reason is that designating, and tracking by, any smaller subdivisions expose banks to charges of redlining and regulatory criticism. Some activities such as loans can be tracked by geocodes, but geocodes do not necessarily correspond to political boundaries or postal codes of cities. Metropolitan Statistical Areas are also used, which are U.S. Office of Management and Budget designations that encompass areas much larger than individual cities.

Thus, the immediate consequence of any local CRA-like ordinance requiring city-specific commitments and reporting will be the dedication of even more resources to satisfy compliance. We recommend that, rather than require institutions to create additional research and paperwork, at great cost to banks, the City should take advantage of reports and data that banks are already required to generate, namely information in the CRA public file and Home Mortgage Data Act (HMDA) reports. These documents are in fact intended to allow the public to evaluate banks' credit and other performance factors.

The reality is that all cities and communities already benefit from the vital services that banks provide under existing CRA activities because the cities and communities are already situated in banks' assessment areas. Investments in LA are already being made, and we object to the singling out of the banking industry for specific legislative focus. It is a difficult time for the City and its residents, but also for businesses, including banks. It is not the time to pile on punitive legislation. It does not help anyone.

**Conclusion**

Once again, CBA and its members are committed to work with the City of Los Angeles to invest in the communities that they serve. We will continue to find innovative ways promote mutual goals. We do not believe that the Proposal effectively furthers these goals, and therefore, we do not support it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland Chan', written in a cursive style.

Leland Chan  
General Counsel