A MODEL STATE INSURANCE COMMUNITY REINVESTMENT ACT

BY

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The Woodstock Institute

The Woodstock Institute is a not-for-profit organization based in Chicago. For the past sixteen years, the Institute has carried out applied research and developed and implemented programs which increase private sector investment in modest-income and minority communities for the benefit of those who live there. It designs programs which bridge the gap between the needs of communities and the resources of banks, savings and loan associations, foundations and others.

The Institute provides a variety of services to community-based organizations, financial institutions, foundations and government agencies, including applied research, policy analysis, program design and evaluation.

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INTRODUCTION

The health of local community economies is key to a strong national economy. As was established by Congress with the passage of the Community Reinvestment Act in 1977, the health of local economies is dependent on access to affordable capital and credit to remain vibrant consumers and producers of goods and services and to maintain the quality of life within the community.

During the 1980s, a growing awareness of the importance of credit and capital in local communities led to the forging of new partnerships between communities and the banking industry. However, changes in the technology and regulation of the banking business has expanded the role that nonbank lenders can and do play in the flow of capital and credit. What has been missing in the process of that expansion is discussion and action on ways to ensure that disadvantaged communities have equal access to the new lenders and capital investors.

The capital and credit needs of disadvantaged communities are similar to those of their more affluent neighbors. These communities, however, frequently do not have access to the same array of diverse and competitive loan products. As residents of these communities struggle to rebuild quality housing and create new employment opportunities for local residents, access to affordable capital and credit is critical to success.

The insurance industry is one of the largest sources of capital in the United States. Although not retail lenders, insurance companies annually invest millions in new construction and in loans for housing. Yet to date, the insurance industry's investment in disadvantaged communities has been uneven and disproportionate to its size as an industry. In addition, insurance company investment in disadvantaged communities has been confined to a programmatic response by individual companies.

The growing recognition of the increasing housing crisis and the continuing need to expand employment opportunities for low- and moderate-income people have created a need to develop public policy goals and objectives that match the capital and credit needs of disadvantaged communities with the ability of capital providers like insurance companies to meet that need. Because insurance companies are regulated at the state and not the federal level, the formulation of these goals and objectives must be at the state level.

To aid policy makers and community development practitioners in initiating discussion of these issues, Woodstock Institute has prepared three publications on the insurance company. The first, **A Community Guide to the Insurance Industry**, provides an overview of the insurance industry and how to research it. In the second publication, **The Silent Partner: The Insurance Industry's Potential for Community Reinvestment**, the Woodstock Institute traces the reinvestment history of the insurance industry and documents the successes and shortcomings in this history. **The Silent Partner** concludes with a series of recommendations for increasing reinvestment by the insurance industry. One of the key recommendations is that states enact Insurance Community Reinvestment Acts (CRAs) to foster reinvestment by the industry.

This publication, third in the series, presents a model state Community Reinvestment Act for insurance companies. It defines reinvestment responsibilities for insurance companies, describes disclosure requirements and mandates oversight and enforcement mechanisms. This model legislation is proposed for discussion and debate. Because the need to open access to additional investment dollars and the ability of each state to implement reinvestment legislation will vary among states, it is expected that this model legislation will need to be modified and adapted to the unique conditions within each state.

Rationale for An Insurance Community Reinvestment Act

States should take this action for several reasons. First of all, it has been well established by the federal Community Reinvestment Act, which covers banks and savings and loan associations, that the existence of a CRA, which clearly establishes the responsibility of a financial institution to reinvest, has increased the loan dollars available in disinvested communities and resulted in a number of bank-community reinvestment partnerships and the extension of credit into low- and moderate-income communities.

Secondly, the insurance industry is a major source of capital for the money markets of the U.S. As an industry, it has been the beneficiary of a number of favorable considerations--first among them an exemption from anti-trust laws and federal regulation. With privileges such as these go responsibilities to society. One of these responsibilities should be the responsibility to reinvest the premiums collected within a state in such a way that they benefit all of the state.

Thirdly, the insurance industry collects premiums from every market within a state, including low-income communities, family farms, and small businesses. If premiums are collected from all of the markets across a state, then there should be an affirmative responsibility to assist in meeting the investment needs of all of those markets, even the more difficult ones.

Fourth, the insurance industry is increasingly in direct competition with the banking industry to make major loans to large borrowers. Since they are now competitors, it is only fair that insurance companies be held to the same standards of community reinvestment that banks are. There should be a "level playing field."

Finally, reinvesting in credit needy markets, be they low income rural or urban communities, family farms, or small businesses, is good business. The jobs and affordable housing created by this type of investment help to improve living standards. This reduces the risks to both health and property for those living in depressed communities.

State laws governing insurance company investments can be placed in three categories. Mandatory laws require companies to place a portion of their investments in certain communities or specific investments. Incentive laws encourage certain types of investments, sometimes providing rewards such as tax advantages for these types of investments. Enabling laws allow companies to make specific types of investments. The impetus for the first two types of laws has generally come from outside the industry, from those interested in having the insurance industry serve the economic development goals of the state. Enabling laws are generally passed at the behest of the industry, to liberalize the restrictions on the types of investments the companies are allowed to make.

The insurance industry has pushed continually for broadened investment authority before state legislatures. These legislative benefits have almost always been granted, and the ability of the insurance industry to succeed has been enhanced. Legislative benefits, however, should not all flow in the direction of the insurance industry. The State Insurance Community Reinvestment Act would introduce equity into this situation by stating the affirmative obligation of this industry to invest in the disinvested markets of the state.

State legislation is necessary because experience has shown that many insurance companies will not meet these responsibilities voluntarily. (See **The Silent Partner** for details.) Experience has also shown that insurance regulators will rarely implement reinvestment programs to reach disinvested markets without a legislative mandate.

In addition, the experience of the last twenty years has also shown that these disinvested markets are good business, full of safe and profitable investment opportunities. Often the problem has been that these have been unfamiliar and misunderstood markets, foreign to the experience of the insurance industry.

State-level Insurance Community Reinvestment Acts would promote reinvestment in the disinvested communities of a state and working partnerships between the insurance industry and housing and economic development practitioners.

A MODEL ACT

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The model Insurance Community Reinvestment Act seeks to foster insurance company reinvestment in two ways. First, it establishes as a condition for doing business in the state the obligation to invest in the disinvested markets identified by the state. In the following outline, these markets are defined as family farms, small businesses, and low- and moderate-income communities. This is the "mandatory" approach.

Secondly, it allows the Director of the State Department of Insurance to designate investments in qualifying non-profit intermediary organizations and state bonds as authorized investments, which would allow these assets to be considered admitted assets. This is the enabling approach. The purpose of this provision is to encourage smaller insurers and property and casualty companies to use intermediaries to reinvest in the state.

The Insurance CRA would be enforced by the State Director of Insurance. The Director would rate the reinvestment performance of all insurance companies operating within the state. This rating would be compiled using information disclosed by the companies, including the location of policies written and premiums collected within the state, by census tract. In addition, the insurance companies would disclose the number, type, and dollar amount of all investments made. Loans made by the insurance company would be disclosed by census tract, and all loans and investments made in the defined disinvested communities would be disclosed separately.

To ensure the adequate enforcement of the Insurance CRA, the Director of Insurance would have the power to fine, suspend, and revoke the license of any insurance company with an inadequate reinvestment record, and community and consumer organizations would have the right to request hearings where they could challenge the right of an insurance company to do business in the State. In addition, the Governor of the State would appoint an Insurance Reinvestment Oversight Committee. This Committee would prepare an annual report on the reinvestment records of the state's insurance companies, which would be forwarded to the state legislature.

This combination of reinvestment responsibilities, disclosure requirements, and oversight and enforcement mechanisms will ensure that the insurance industry participates as full partners in the reinvestment in those parts of this country which need it most.

INSURANCE COMMUNITY REINVESTMENT ACT

This Act establishes that insurance companies which operate in the State of [_______] have a continuing and affirmative obligation to invest in the disinvested markets of this State, those being defined as the small businesses, low- and moderate-income communities, and family farms of the State of [_______]. This investment shall be done either directly or through approved intermediaries and authorized investments. This Act establishes adequate reinvestment performance as a condition for doing business in the State of [_______].

Community Reinvestment Responsibilities

COMMUNITY REINVESTMENT RESPONSIBILITIES: This Act establishes that insurance companies which do business in the State of [_______] have a continuing and affirmative obligation to invest in the small businesses, low- and moderate-income communities, and family farms of [_______]. This obligation may be met in part through either direct loans or through Authorized Investments designated by the Director of Insurance as satisfying the reinvestment responsibilities of this Act.

AUTHORIZED INVESTMENTS: The Act grants the Director of Insurance the power to designate as "Authorized Investments": 1) the loan funds and investments in not-for-profit intermediaries which in turn lend to or invest in [_______] development, 2) securities backed by [_______] development loans, and 3) bonds issued by State of [_______] agencies. These Authorized Investments shall satisfy the reinvestment responsibilities of this Act if these investments are determined to serve the investment needs of small businesses, low- and moderate-income communities, and family farms in [_______]. These Authorized Investments must be determined to be consistent with the safe and sound operation of the insurance companies by the Director of Insurance.

DEFINITIONS:

Low- and Moderate-Income Communities: For purposes of this Act, this shall refer to those communities where the majority of the residents fall below the Bureau of Labor Statistics' Lower Level Income Standard of Living (LLISL).

Small Businesses: For purposes of this Act, small businesses are defined as those with annual sales of less than $10 million and who employ residents of the State of [_______].

Family Farms: For purposes of this Act, family farms are defined as those farms where the family makes all management decisions, farming is the principal livelihood, no more than a reasonable amount of labor is provided by non-family members, and gross sales are less than $500,000 per year.

Not-For-Profit-Intermediaries: For purposes of this Act, not-for-profit intermediaries are those 501(c)3 tax-exempt organizations which package loans and administer loan funds for economic and housing development in low- and moderate-income communities, for small businesses, and for family farms.

Citizen's Groups: For purposes of this Act, citizen's groups are incorporated 501(c)3 and 501(c)4 not-for-profit organizations which represent the interests of at least 50 consumers.

COMMUNITY REINVESTMENT STATEMENT:

The board of directors of each insurance company which does business in the State of [_______] shall annually adopt a **Statement of Community Reinvestment in [_______]** that describes its efforts to meet the investment needs of low- and moderate-income communities, small businesses, and family farms in [_______]. Copies of the statement shall be publicly available at all locations in [_______] where the company does business.

CRA FILE:

Each insurance company shall maintain a file of any written comments submitted by [_______] residents over the past two years on its reinvestment performance. This file shall also contain copies of any responses that the insurance company makes to these comments. This file will also contain a copy of the two most recent Reinvestment Reports, listing the company's investments in [_______] (see below). This file shall be available to the public for review upon request.

A file containing the above information shall be available at each office of the insurance company in [_______].

CRA NOTICE: Each insurance company shall post a notice at each business office in [_______] that describes how to obtain a copy of the Statement of Community Reinvestment in [_______]; where to send comments about the institution's reinvestment performance; where to review the file of comments on the institution's reinvestment performance; and how to file a complaint or request a hearing from the Department of Insurance.

Disclosure

REINVESTMENT REPORT: Insurance companies shall file annually with the Director of Insurance a Reinvestment Report which discloses by county and census tract (or by county in rural areas without census tracts) the number of policies sold and dollar amounts of premiums collected in [_______] for each line of insurance during the previous year. Each company will disclose by county and census tract the type, number, and dollar amount of all loans made in [_______], including (but not limited to) commercial, housing, farm, and consumer loans. Each company will disclose the type, number, and dollar amount of all other investments made in [_______], including (but not limited to) government obligations, corporate bonds and equities, and open market paper. In addition, each company will disclose all investments made which specifically meet the investment needs of small businesses, low- and moderate-income communities, and family farms in [_______]. The Director of Insurance shall have the power to require such additional disclosure as is necessary to evaluate the reinvestment performance of insurance companies operating in [_______], to enforce compliance with this Act.

This data must be disclosed for each calendar year and shall be publicly available at the insurance company by March 31 of each year. Copies of this information must be provided upon request. A reasonable fee may be charged for the cost of copying.

PUBLIC ACCESS: Two copies of the Reinvestment Reports shall be filed with the Department of Insurance by March 31 of each year. The Department of Insurance will maintain organized files of the disclosure information available to the public in the State capitol. The Department of Insurance shall make the information available to the public for review and copying at their office during normal business hours.

Oversight and Enforcement

It is the purpose of this Act to require the Department of Insurance to use its authority when examining insurance companies to encourage such institutions to invest in small businesses, low- and moderate-income communities, and family farms in [_______], consistent with the safe and sound operation of such institutions.

REINVESTMENT RATINGS: When examining insurance companies the Department of Insurance shall rate the reinvestment performance of the company on a 1-5 scale, with 1 being the highest. No more than 20% of the companies shall fall into the highest or lowest rating category. The reinvestment rating of the insurance company shall be made public.

PUBLIC HEARINGS: Any community organization representing at least 50 residents that has a complaint about the reinvestment performance of an insurance company can request and receive a public hearing on their complaint. The public hearing will be conducted by the Director of Insurance, shall be attended by the insurance company in question, and must be held at a time and place convenient for the residents.

POWERS OF DIRECTOR: The Director of Insurance shall have subpoena power at these hearings, and shall have the power to solicit testimony and evidence. Within 30 days of the end of the hearing the Director of Insurance shall issue a finding. A finding of inadequate reinvestment performance shall be grounds for a cease and desist order, fines, or suspension or revocation of the license of the company, as determined by the Director.

Oversight Committee

The Director of Insurance, with confirmation by the State Legislature, shall appoint a seven-member Insurance Reinvestment Oversight Committee, with a majority of the members representing low- and moderate-income communities, small businesses, and family farms, and with the remaining representatives from the insurance industry. The Oversight Committee shall meet no less than once a quarter and shall monitor implementation of this Act and the results of any Reinvestment Hearings.

ANNUAL REPORT: The Oversight Committee shall present an annual report to the Legislature on the implementation of this Act. This report will include an analysis of lending and investments disclosed by the insurance industry; the lending which reached the low- and moderate-income communities, small businesses, and family farms of [_______]; the reinvestment ratings of the insurance companies doing business in [_______]; and the results of any Reinvestment Hearings. This report shall be prepared by the staff of the Department of Insurance at the direction of the Oversight Committee, and ratified by the Committee.

Severability

Should any court of competent jurisdiction hold any section, subdivision, clause, phrase, or provision of this Act to be unconstitutional or invalid for any reason whatsoever, such holding shall not affect the validity of the remaining portions of this Act.