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**Office of the Comptroller of the Currency  
Federal Deposit Insurance Corporation  
Federal Reserve Board  
Office of Thrift Supervision**

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**Interpretive Letter #728  
July 1996  
12 U.S.C. 2901**

June 18, 1996

Cathy Donchatz, Director  
Product Promotion Division  
Department of the Treasury  
Financial Management Service  
Washington, D.C. 20227

Dear Ms. Donchatz:

This letter responds to your correspondence dated April 24, 1996, concerning the treatment under the revised Community Reinvestment Act (CRA) regulations of the "Direct Deposit Too (DD Too)" program that the Financial Management Service (FMS) hopes to develop. As you know, the four bank and thrift regulatory agencies have promulgated substantively identical CRA regulations.<sup>1</sup> Therefore, staffs from all of the agencies have considered the issues you raised, and they concur in the opinions expressed in this letter.

The purpose of the DD Too program is to expand direct deposit, especially to recipients of federal payments who do not presently have deposit accounts. FMS estimates that about 10 million people who receive Federal salary and benefit payments lack deposit accounts. FMS also believes that some payment recipients that have deposit accounts but do not currently have their payments deposited electronically would be willing to accept direct deposit of their payments into a low-cost account.

The DD Too program would encourage financial institutions to offer an "easy to use" account principally for direct deposit of federal payments and debit transactions. Although FMS does not intend to establish uniform account criteria, it envisions that banks would offer accounts in which:

b checks would not be permitted to be drawn;

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<sup>1</sup>12 C.F.R. parts 25, 228, 345, and 563e (1996).

- þ only debit transactions would be permitted (except for the recurring direct deposit of federal payments);
- þ there would be no minimum balance requirement; and
- þ overdrafts would not be permitted.

You have asked whether a regulated financial institution that offers an account of this type (DD Too account) would receive favorable consideration under the CRA regulations. As explained more fully below, in some circumstances, a DD Too account could receive favorable consideration as a “community development service.” Furthermore, the electronic deposit and debit features of DD Too could be considered as part of an alternative delivery system for the delivery of retail banking services through “electronic banking.”

### ***Discussion***

#### I. DD Too Concept

##### A. Community Development Service

The revised regulations provide different methods for evaluating a financial institution’s CRA performance depending on the size of the institution and its business strategy. Under each of these methods, an institution may, under certain circumstances, receive favorable consideration for providing community development services that benefit its assessment area or a broader statewide or regional area that includes the assessment area. A large institution’s CRA performance is typically evaluated under the lending, investment, and service tests. Examiners of large institutions consider community development services under the service test. 12 C.F.R. §§ 25.24, 228.24, 345.24, and 563e.24 (1996). Evaluation of a large institution’s performance under the service test of the CRA regulations includes an assessment of the extent to which the institution has provided community development services and the innovativeness and responsiveness of the services. 12 C.F.R. §§ 25.24(e), 228.24(e), 345.24(e), and 563e.24(e) (1996). If the institution elects, a small institution’s provision of community development services, including their innovativeness and responsiveness, are considered to determine whether the institution merits an “outstanding” rating. See 12 C.F.R. pt. 25 app. A(d)(2), pt. 228 app. A(d)(2), pt. 345 app. A(d)(2), and pt. 563e app. A(d)(2) (1996). The community development test, which is used to evaluate the record of an institution designated as a wholesale or limited purpose institution, also considers community development services. Evaluation of a wholesale or limited purpose institution’s performance under the community development test includes an assessment of the innovativeness and responsiveness of the community development services. 12 C.F.R. §§ 25.25, 228.25, 345.25, and 563e.25 (1996). Finally, institutions evaluated on the basis of a strategic plan must include in their plan how they intend to meet the credit needs of their assessment area, particularly the needs of low- and moderate-income geographies and persons. They may meet credit needs through lending,

investment, and/or services, as appropriate. 12 C.F.R. §§ 25.27, 228.27, 345.27, and 563e.27 (1996).

A “community development service” is a service that has “community development” as its primary purpose, relates to the provision of financial services, and has not been considered as part of an institution’s provision of retail banking services. 12 C.F.R. §§ 25.12(j), 228.12(j), 345.12(j), and 563e.12(i) (1996). Community development means: affordable housing for low- or moderate-income persons; community services targeted to low- or moderate-income persons; activities that promote economic development by financing small businesses or farms; and activities that revitalize or stabilize low- or moderate-income geographies. 12 C.F.R. §§ 25.12(h), 228.12(h), 345.12(h), and 563e.12(g) (1996).

To qualify as a community development service, therefore, a deposit service must be targeted to low- or moderate-income persons. For example, a deposit service that reduces costs of, or otherwise improves access to, financial services for low- or moderate-income persons may be considered a community development service. Thus, the agencies have noted that community development services include offering “lifeline” accounts (low-cost or free accounts for basic banking needs). 59 Fed. Reg. 51232, 51239 n.3 (October 7, 1994).<sup>2</sup> Community development services also include low-cost or free government check cashing and similar services that have community development as the primary purpose. For example, as stated in the Supplementary Information to the revised regulations, “electronic benefit transfer and point-of-sale terminal systems that are designed to improve access, such as by decreasing costs, for low- or moderate-income individuals would receive favorable consideration.” 60 Fed. Reg. 22156, 22160 (May 4, 1995).

Treatment of a DD Too account as a community development service depends on whether the account is targeted to low- or moderate-income persons. For example, an account that is restricted to direct deposit of Supplemental Security Income payments would generally be targeted to low- or moderate-income persons. On the other hand, an account that is established to receive federal salary payments might not be targeted to low- or moderate-income persons. A DD Too account that is free or low-cost and that improves access for low- or moderate-income persons to financial services would be comparable to a lifeline account and therefore could qualify as a community development service.

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<sup>2</sup>The Supplementary Information to the October 7, 1994, proposed revision of the CRA rules stated that the provision of lifeline accounts would be considered a community development service. Although the Supplementary Information to the May 4, 1995, final revised rules did not include a similar reference to lifeline accounts as an example of a community development service, no substantive change was intended. Lifeline accounts are a community development service under the revised rules because they reduce costs of, and improve access to, financial services for low- or moderate-income persons.

## B. Alternative Delivery System

Examiners also could consider a retail institution's provision of electronic banking services as an alternative system for delivering retail banking services. An alternative delivery system includes, for example, ATMs, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs. 12 C.F.R. §§ 25.24(d)(3), 228.24(d)(3), 345.24(d)(3), and 563e.24(d)(3). An alternative delivery system would also include some components of DD Too, such as electronic deposit and electronic debit.

The consideration given to a financial institution's provision of an alternative delivery system depends on the availability and effectiveness of the system in serving low- or moderate-income areas and persons. 12 C.F.R. §§ 25.24, 228.24, 345.24, and 563e.24 (1996). A large institution's use of alternative delivery systems is evaluated under the service test. *Id.* If a small institution elects, its performance in providing delivery systems that enhance credit availability in its assessment area, including alternative delivery systems, is considered to determine whether the institution merits an "outstanding" rating. See 12 C.F.R. pt. 25 app. A(d)(2), pt. 228 app. A(d)(2), pt. 345 app. A(d)(2), and pt. 563e app. A(d)(2) (1996). Finally, institutions evaluated on the basis of a strategic plan might include use of alternative delivery systems in their plans. See 12 C.F.R. §§ 25.27, 228.27, 345.27, and 563e.27 (1996). Retail banking services, including alternative delivery systems, are not considered in the evaluation of wholesale or limited purpose institutions, which are evaluated under the community development test. See 12 C.F.R. §§ 25.25, 228.25, 345.25, and 563e.25 (1996).

## III. Mandatory Electronic Fund Transfer

Your letter predates by one day the passage of a federal law that requires all federal payments to be made electronically. The Omnibus Appropriations Act of 1996<sup>3</sup> includes provisions that require all federal payments made after January 1, 1999, to be made electronically to a financial institution or another agent authorized by the recipient to receive the payments. The law authorizes the Secretary of the Treasury to prescribe regulations to ensure that federal payment recipients required to have an account at a financial institution to receive the electronic funds transfer will have access to an account at a "reasonable cost."

This law may affect the DD Too program and the CRA issues presented by your inquiry. Assuming that a financial institution is required to provide an account for the direct deposit of federal payments, as a general matter, that institution would be providing a community development service if the account is targeted to low- or moderate-income persons. However, the weight given to provision of a government-mandated account would depend on other factors in the CRA rules. For example, the effect on a large financial institution's CRA rating

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<sup>3</sup>Pub. L. No. 104-134, 142 Cong. Rec. H3942 (daily ed. April 25, 1996) (to be codified at 31 U.S.C. 3332(f)(1)).

of this community development service would depend on the innovativeness and the responsiveness of the service to community needs. It appears unlikely, however, that examiners would consider the provision of a *government-mandated* account to be innovative or responsive to the particular needs of an institution's community.

Further, as a general matter, an institution that provides for the electronic deposit and debit of federal payments pursuant to the new law could be considered to be providing an alternative delivery system, which would be evaluated based on the availability and effectiveness of the system in delivering retail banking services in low- and moderate-income areas and to low- and moderate-income persons.

I trust that this letter has been responsive to your inquiry. The financial supervisory agencies will consider incorporating this guidance into the formal written guidance on the new CRA regulation that is being developed by the staffs of the agencies. If you have any further questions concerning this matter, please feel free to contact me or Michael Bylsma of my staff at (202) 874-5750.

Sincerely,

/s/

Matthew Roberts  
Director  
Community and Consumer Law Division  
Office of the Comptroller of the Currency