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Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Attention: Docket 04-06

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Docket No. R-1181

Leneta G. Gregorie
Legal Division
Room MB-3082
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Attention: Comments

Information Collection Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Sir or Madam:

In response to the notice of proposed rulemaking published in the Federal Register on February 6, 2004, the New York Bankers Association is submitting these comments on the regulations implementing the Community Reinvestment Act (CRA). Our Association strongly supports an increase in the size of institutions eligible for the streamlined CRA examination process. We do not object to using evidence that institutions engaged in certain discriminatory, illegal or abusive credit practices to adversely affect the institution's CRA rating, although we urge the agencies to adopt appropriate and specific guidelines to advise institutions what conduct will result in an adverse rating impact. We also recommend providing CRA credit for certain types of real estate-related loans that we understand are unique to the New York market. Our Association is comprised of the community, regional and money center banks of New York State with aggregate assets in excess of $1 trillion and more than 280,000 New York employees.

This joint proposal by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of Thrift Supervision (hereinafter, the "federal regulatory agencies" or "the agencies") would increase from $250 million to $500 million in assets the size of institutions defined as "small" and therefore eligible for the agencies' small institution evaluation standards,

the streamlined CRA examination process first adopted in 1995. The proposal would also ignore holding company and affiliate assets in determining whether an institution was under $500 million in assets. In addition, the proposal would provide that evidence that an institution or any of its affiliates had engaged in certain discriminatory, illegal or abusive credit practices would adversely affect the institution's CRA performance evaluation.

I. Streamlined Examination Eligibility

In comments filed with the agencies in 2001, our Association urged that the $250 million asset limit on streamlined examinations be increased. We noted:

> Whereas only a few years ago, banks with assets below $250 million accounted for more than 90% of all institutions, today they account for a far smaller percentage. We would therefore recommend, first, that the agencies delete the limitation of the small bank definition to banks that are in holding companies with less than $1 billion in assets, and, second, that the asset definition for small banks be increased to $1 billion. The limitations in the small institution examination to those not part of a holding company of more than $1 billion is not consistent with banking reality. A community bank does not cease to be a community bank by becoming part of a larger holding company. Moreover, we are unaware of any institutions that choose their form of corporate organization (whether a branch or a separate charter) in order to minimize their CRA compliance burden.
> In addition, the $250 million definition for small institution certainly is inapplicable to a State like New York, where institutions many times larger are competing against some of the largest depositories in the nation.

We believe that these comments remain valid today. We are pleased that the agencies have chosen to propose a substantial increase in the size limitation for institutions subject to the streamlined examination process. However, the agencies' proposal would provide insufficient relief in a State like New York, the size of whose institutions on average far exceed the national norm. The average size depository institution insured by the FDIC in New York at the end of 2003 was well over $8 billion, while the average nationwide was barely a tenth that size at $988 million. Moreover, the median size bank in New York, at almost $300 million, far exceeds the median size bank nationwide. By increasing the asset definition for banks subject to the streamlined examination procedure to $1 billion, the agencies would continue to subject $1.697 trillion (98%) of the $1.733 trillion in assets in insured institutions in New York to a full-scope CRA examination. This percentage would still greatly exceed the national percentage of under 90% of assets covered by the full-scope CRA examination requirement if the agencies' proposal is adopted. Increasing the asset size from $250 million to $500 million will release an additional 44 New York institutions to be examined under the streamlined procedure. Moving from $500 million to $1 billion would add another 26 institutions – almost 50% more - to the number that would not be required to undergo the full CRA examination.

As the agencies are aware, the difference in cost, time and burden between a full-scope CRA exam and the streamlined examination to which smaller institutions are now subject is not trivial. Anecdotal evidence cited in the agencies' proposal indicates that the compliance cost differential for comparably sized institutions may exceed 300%. One of the major purposes of the 1995 revisions in the agencies' CRA regulations was to minimize the regulatory burden of compliance. Increasing the size of institutions eligible for the streamlined examination from $250 million to $1 billion would, we believe, better serve that objective, with very little impact on the assets that would continue to be subject to the full-scope examination.

Our Association also strongly supports the elimination of the holding company limitation on bank eligibility for the streamlined examination process. The current restriction that precludes banks of whatever size from participating in the streamlined examination if their holding company exceeds $1 billion in assets does not accurately reflect the costs of compliance. New York banks experience comparable compliance costs at the bank level irrespective of the size of their holding companies. In addition, small banks affiliated with holding companies in excess of $1 billion in assets remain independent typically for geographic, corporate governance or historic reasons having little if anything to do with maintaining a streamlined examination procedure. We therefore agree with the agencies' proposal that the holding company limitation on the streamlined examination procedure be abolished.

II. Adverse Affect of Certain Credit Practices

The agencies also requested comments on making explicit that evidence of certain discriminatory, illegal or abusive credit practices may adversely affect an institution's CRA rating. Currently, the regulation provides that "evidence of discriminatory or other illegal credit practices adversely affects" an agency's evaluation of an institution's CRA performance. The proposal would expand this provision to include specified predatory lending and other abusive credit practices affecting consumer and housing (but not business) loans. Some of these practices, such as equity stripping, are central characteristics of predatory lending. Our Association strongly opposes predatory lending and does not object in principle to a provision that evidence of such credit practices may adversely affect an institution's CRA rating. However, we believe that it is critically important for the agencies to provide specific guidance with regard to the practices that could have an adverse affect and the type of adverse affect that different practices could engender. Without such guidelines, institutions will be unable to determine in all cases whether programs designed to serve special niche credit markets with unusual features could draw adverse CRA comment.

III. Public Files

Our Association also suggests two additional amendments to the current CRA regulations. First, the agencies indicate that they examined but chose to propose no changes in the requirements governing material that must be placed in public file. However, several of our member banks have indicated that the material in the public file

at each of their branches adds materially to their regulatory burden. We would therefore suggest that the agencies reconsider whether each branch needs to maintain a separate public file. So long as a complete public file is maintained or can be made available at a location that is geographically convenient to any person requesting access to the file, branches should not be required to maintain separate public files.

IV. CRA Credit for Modifications

Second, New York's mortgage recording tax – and the way it is administered – has given rise to a type of lending that is, we believe, unique to our State. In New York, the mortgage recording tax is assessed on the entire amount financed. There are no exceptions for refinancings. As a result, banks have developed a type of loan called a "modification" to allow an existing mortgage loan to be refinanced with the mortgage recording tax charged only on the amount by which the principal balance of the new loan exceeds that of the old.

Because "modifications" are considered refinancings for the purpose of CRA, there is no CRA credit available to New York banks for these types of loans, even though they are specifically designed to add value for the home-owner. The economic effect of the loan is to extend additional credit to the borrower. When the loan is secured by property in a low- to moderate-income area, our Association would respectfully request that the agencies amend their regulations to provide CRA credit for "modifications," at least to the extent that the value of the principal subject to the modification exceeds the original principal amount of the loan.

The New York Bankers Association appreciates the opportunity the agencies have provided to comment on these amendments to the regulations implementing the Community Reinvestment Act. We urge the agencies to act quickly to increase the size of banks subject to the streamlined CRA examination, to eliminate the bank holding company limitation from consideration with regard to eligibility for the streamlined exam, to provide guidelines for the type of conduct that could result in adverse affects on a bank's CRA rating, to minimize the burden of the public CRA files and to include modifications in the types of loans eligible for CRA credit.

Sincerely,

Michael P. Smith