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5 April, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mail stop 1-5
Office of the Comptroller of the Currency — via Fax: 202-874-4448
250 E Street, SW
Washington, DC 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System — via Fax: 202-452-3819
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation — via Fax: 202-898-3838
550 17th Street, NW
Washington, DC 20429

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision — via Fax: 202-906-6518
1700 G Street NW
Washington DC 20552

Dear Officials of Federal Financial Regulatory Agencies:

In response to the request for public comment on Proposed Changes to the Community Reinvestment Act, I should like to offer the following comments against the changes:

Before entertaining the proposed changes, it might be better to examine how well financial institutions subject to the Act are performing against the existing requirements and mandates. Regulators should make this evaluation not from the statistics of examination results, but whether these institutions are indeed responding to the **actual** credit needs of the communities they serve.

The primary rational for this suggestion is the strange situation where we see the dramatic growth of the payday advance industry at the same time when almost all banks receive "Satisfactory" ratings on their CRA examination.

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By definition a payday advance customer must have both a job and a checking account. The borrower must write a post-dated check to secure his loan. Under CRA, these depository customers should be able to turn to their banks for these types of loans. But they do not.

These customers are neither "un-bankable" nor financially illiterate. They just can't find banks that make short-term, small dollar value, unsecured loans – the type of loans that millions of low- to moderate-income consumers need to handle personal emergencies. Although situations requiring just a few hundred dollars may appear inconsequential to bankers, they are cataclysmic to those in need:

- The lady who needs $200 to fix the clutch in her car so that she can get to work and keep her job;
- The mother who needs $300 for the security deposit on the first apartment for her family outside of public housing; and
- The father who needs $150 to keep from having the electricity turned off in his apartment.

Representatives of bank regulatory agencies have told me that, in practice, regulators have interpreted the CRA mandate only in terms of mortgages. But it would appear logical that without access to short-term, small dollar value, unsecured loans, hard-working Americans who live paycheck to paycheck are even less likely to achieve the goal of home ownership.

Instead, the lady can't fix her car, loses her job and files for unemployment benefits. The mother resigns herself to life in the projects, where her children inherit the public subsistence mentality. And the father's family has to deal with the demoralizing ramifications of no lights, no refrigerator, no stove, no hot water, no radio, and no TV.

My consulting practice deals solely with using technology to expand access to financial services to underserved populations. Engagements have targeted populations in South Africa, the Middle East and here in the US. In each of these environments, banks have given many reasons for not serving the credit need of low-income consumers. Here in the U.S., the few banks that do support the extension of small, short-term loans to the poor are being persecuted and driven from the business. None of it seems right – to me.

This nation has conferred on banks a legal monopoly to hold consumer deposits. With that privilege comes a moral responsibility and regulatory duty to serve the credit needs of their depositors – from long-term mortgages to short-term emergency loans. After years of abuse, these responsibilities and duties were written into the spirit, if not the letter of the Community Reinvestment Act. But they cannot work without enforcement.

As you revisit this important legislation, I encourage you to hold the institutions under your supervision to the strictest interpretations of requirements of the existing Act. If the language therein does not suffice to ensure that all Americans – like those cited above – can rely on their banks for credit when they need it, I urge you to strengthen both the wording of the Act and the requirements of subsequent examinations.

Please, do not make it easier for banks in the greatest nation in the world to ignore the basic financial needs of our poorer citizens. Use all your regulatory powers to force banks, thrifts and other insured depository institutions – regardless of asset size – to increase their investments in and services to low- to moderate-income neighborhoods. Increase – not decrease or streamline – the rigor of CRA examinations to ensure protections for those who cannot protect themselves.

Please demand that banks and thrifts of all sizes provide branches, accounts and services to all citizens and communities, directly or through those state-licensed entities on which low- to moderate-income consumers rely for their financial needs.

Please be careful not to allow your important efforts to be compromised by specious claims and semantic games around what is or is not a "predatory" loan. Clearly, a high rate or fee should not be the sole defining characteristic of a predatory activity. In the absence of alternatives, what may appear a high cost to one, may be a market rate to another. Many attempts to make cost the primary determinant of illegal lending appear to be aimed at eliminating those lenders that do make loans to consumers who cannot obtain credit from the banks that hold their depositors.

By closing branches in poor neighborhoods, gerrymandering service areas and co-opting the service test to examine only mortgages, banks have given the impression that they are serving the credit needs of their depositors. But, there is ample evidence that banks have actually curtailed lending and other financial services to low- to moderate-income consumers as well as the non-bank financial intermediaries to which these citizens must turn to satisfy their needs. Only by increasing the scope and rigor of the CRA examinations of **all** banks and thrifts, regardless of size, will those who most need credit, regardless of term, be assured of its availability.

Thank you for providing the opportunity for this comment.

Sincerely,

James R. Wells, Jr.

CC: President George W. Bush via Fax: 202-456-2461