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227

October 16, 2001

Docket No. 01-16, Communications Division
Public Information Room, Mail Stop 1-5
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
(via e-mail: regs.comments@occ.treas.gov)

Docket No. R-112
Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
(via e-mail: regs.comments@federalreserve.gov)

Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
(via e-mail: comments@fdic.gov)

Regulations Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2001-49
(via e-mail: public.info@ots.treas.gov)

RE: Community Reinvestment Act, Advanced Notice of Proposed Rulemaking

To Whom It May Concern:

We are writing to you on behalf of the Western New York Law Center's Community Reinvestment and Fair Lending Project. The purpose of this letter is to comment on the Joint Advance Notice of the Proposed Rulemaking on CRA Regulations, 12 CFR Part 24.

The Western New York Law Center, Inc., a not-for-profit law center serving indigent clients, began the Community Reinvestment and Fair Lending Project (hereinafter "the Project) two years ago. The main goal of the project is to increase quality lending and banking services to low- and moderate-income communities in Western New York. The Law Center serves the thirteen counties of Western New York. The Project focuses on lending in two of those areas: the Buffalo-Niagara metropolitan area and the Jamestown metropolitan area, primarily, the city of Dunkirk.

To guide the Project, the WNY Law Center convened a community lending advisory council that consists of over 30 groups, including not-for-profit neighborhood housing services, faith-based organizations, academic institutions, and social service agencies.

The CRA and the HMDA are incredibly important tools that we have used to stimulate increased lending, financial services, and investment in the Western New York area. The CRA has facilitated meetings with financial institutions to discuss their lending performance, and ways in which they can improve lending and services to low- and moderate- income persons and communities in Western New York. For example, the WNY Law Center has held several meetings between our advisory group, regulators, and banks when the banks have been examined or reviewed by regulators. In several instances, those meetings led to constructive changes in the way area financial institutions serve the needs of underserved populations. One meeting led to a decision that a local bank maintain an ATM in an underserved area where the bank had planned to close one of their branches. The bank also agreed to have mortgage product flyers/advertisements translated into Spanish to serve the significant Hispanic population in that area. In addition, we are currently discussing with another financial institution their proposed plans to close a branch in an underserved area in the City of Buffalo. We wouldn't have had the opportunity to discuss or negotiate these issues without the CRA.

The CRA must be kept strong, particularly since financial institutions still do not adequately serve some communities, like those in the City of Buffalo and in the rural areas of Western New York. The 1995 regulatory changes to the CRA were a positive step in strengthening the law; we cannot afford to have those changes watered-down. Alternatively, CRA regulations should be strengthened and updated to keep pace with the dramatic changes that have occurred in the financial services industry since 1995, including the passage of the Gramm-Leach-Bliley Act in 1999.

Following are more specific comments organized by the questions put forth in the ANPR. Those questions of most importance to our Project are answered below:

Section 1. Large Retail Institutions: Lending, Investment and Service Tests

Question 1: Do the regulations strike the appropriate balance between quantitative and qualitative measures, and among lending, investments, and services?

Answer Question 1: Quantitative measures should continue to have significant weight in all three tests. Qualitative measures should not be weakened either but should be improved. For example, it is very necessary, in light of rampant predatory lending practices, to be able to evaluate and score a bank's lending for costs and abusive terms.

Some area banks have commented to us that having to focus on quantity in making CRA loans forces them to make unsound loans and incur losses. As noted by the Woodstock Institute and others, there has never been an independent study that confirms that banks are incurring significant losses due to lending to low- and moderate- income borrowers. The solution is not to weaken the regulation so that quantity doesn't matter; instead, banks must look to "best practices" from other banks around the country that are successfully lending and providing services to underserved communities.

We also agree with the Woodstock Institute and others that the regulations should include a proviso that banks must maintain a minimal level of investment and service performance to score a satisfactory or above rating on a CRA test. We have repeatedly heard from community representatives that bank service and presence is absolutely critical and vital to the neighborhoods they represent.

Question 1, Part A: Does the lending test effectively assess an institution's record of helping to meet the credit needs of its entire community?

Answer Question 1, Part A:The lending test should remain an important component of CRA performance evaluations. However, there are several changes needed to improve the test.

First, we agree with the Woostock Institute that the geographic distribution criteria should include race of the neighborhood as well as the income of the neighborhood. Secondly, the interest rate of each loan should be reported so that we can evaluate banks' sub-prime and prime lending activity. In conjunction with this item being reported, regulators should examine all sub-prime loans for abusive terms, including high fees, APRs, the inclusion of single premium credit insurance, mandatory arbitration or balloon payments on high interest loans. **If a bank makes any loans in violation of state or federal lending or consumer laws, it should receive a Substantial Noncompliance lending rating. Similarly, if a bank makes payday or auto title loans significantly above standard industry rates, it should receive a Substantial Noncompliance rating.**

In addition, home-secured loans should be evaluated separately based on the purpose for which the money is lent (purchase, home equity, etc.). In the past, some banks in our area have not served the needs of underserved communities well in terms home purchase needs, electing instead to concentrate on refinance or home equity loans as their mode of CRA lending.

Question 1, Part B: Does the investment test effectively assess an institution's record of helping to meet the credit needs of its entire community?

Answer Question 1, Part B: The investment test is an important part of assessing whether a bank serves community needs. Investments by banks in area funds and programs are a very important method of funding those programs, particularly in our area because the need for services is great and because publicly funded services and programs cannot keep up with demand. The regulations should pay more attention to a specific community's needs so that when reviewing a bank's investment record, regulators are not comparing the record to an overall national perception of community needs. There is a great need for investment in small programs that benefit various segments of our population in WNY. For example, a non-profit entity in WNY currently operates a micro-loan program to assist immigrants and other at-risk populations with first and last month rent payments, etc. This is the type of program that needs investment and attention from banks in our community.

We also strongly believe that bank investments in mortgage- and asset-backed securities should be reviewed to screen for investment in securities the underlying loans of which are abusive or predatory.

Question 1, Part C: Does the service test effectively assess an institution's record of helping to meet the credit needs of the entire community?

Answer Question 1, Part C:The service test is an integral and necessary part of the CRA review. As mentioned before, when we speak to community representatives about our project, the first topic they want to discuss is bank services in their neighborhood, why they are lacking, and what could be done to improve them.

The regulation should be improved to include a method of assessing a bank's performance in delivery, not just assessment of delivery channels. And it is very important to understand how bank services effect low- and moderate- income neighborhoods and individuals. For example, a low monthly fee checking account is not necessarily a low cost account if a customer is charged exorbitant fees for overdrafts, etc. And the un-banked will never use conventional checking accounts if they do not have access to their payroll checks immediately. Folks who live pay check to pay check can't wait until Monday for their checks to clear.

Section 6: Assessment Areas

Question 1: Do the provisions on assessment areas, which are tied to geographies surrounding physical deposit facilities, provide a reasonable and sufficient standard for designating the communities within which the institution's activities will be evaluated during an examination?

Answer Question 1: The provisions on assessment areas need to be changed to keep pace with the dramatic changes in delivery of financial services. The provisions are inadequate to deal with the current ways banks do business, particularly with regard to changes allowed by the Gramm-Leach-Bliley Financial Modernization Act. The assessment area should not be tied to the geography surrounding physical deposit-gathering facilities. Financial institutions are now very likely to have some or all of their activity outside of their deposit facilities area. Instead of defining the assessment area by geography, it should be defined by some minimum level of activity in an area, either deposit activity or loan activity. Understanding all of the activity from all CRA regulated financial institutions doing business in a particular community is vitally important to assessing the ways in which the community is affected by financial institutions. For example, in Western New York, it seems a great deal of loan activity is generated by financial institutions whose assessment areas are outside of Western New York. As a community, we have no way of assessing the type or amount of that loan activity or whether it is meeting community needs or actually harming the community.

Section 7: Activity of Affiliates

Question 1: Are the provisions on affiliate lending activities, which permit consideration of an institution's affiliates' activities at the option of the institution, effective in evaluating the performance of the institution in helping to meet the credit needs of its entire community, and consistent with the CRA statute?

Answer Question 1: Affiliate lending should be examined in performance evaluations; banks should not be allowed the option to not include affiliate activity. Again, examination of affiliate activity is extremely necessary considering the huge impact sub-prime lending has had in low- and moderate- income communities. In addition, all of the affiliates lending products including residential and small business products, should be examined.

We appreciate the opportunity to comment on proposed changes to the CRA regulations. We agree with the National Community Reinvestment Coalition that the regulatory agencies should hold hearings around the country when the agencies propose specific changes to the regulations.

Thank you for your consideration.

Sincerely,

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The following agencies and groups that are part of our Community Reinvestment Project are also signatories to this letter:

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Cc: National Community Reinvestment Coalition
Congressman John LaFalce
Congressman Jack Quinn
Senator Charles Schumer
Senator Hillary Clinton