GREATER ROCHESTER
COMMUNITY REINVESTMENT COALITION
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January 21, 2005

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G St. NW
Washington DC 20552
Via email: regs.comments@ots.treas.gov

Attention: No. 2004-53 & 2004-54

To Whom it May Concern:

The Greater Rochester Community Reinvestment Coalition (GRCRC), a member of the National Community Reinvestment Coalition (NCRC), urges you to withdraw your proposed changes to the Community Reinvestment Act (CRA) regulations. The proposed changes will greatly reduce the level of community development financing and thrift services in low- and moderate-income communities.

GRCRC was convened in 1993 to generate discussions about the lending patterns in Rochester, NY. Since then, the Coalition has released seven analyses of home mortgage, small business and subprime lending data. We have used the analyses to identify strengths and weaknesses in lending patterns and to generate ongoing discussion with the banks in question. The Coalition also submits comments, based on the data, to the appropriate State and Federal regulators who have oversight of the banks.

GRCRC has a membership of over 30 locally based not-for-profits and individuals. GRCRC monitors the community reinvestment lending of Bank of America, JPMorgan Chase, Citigroup, Canandaigua National Bank, M&T Bank, HSBC and Charter One.

CRA has been instrumental in increasing homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities including those in the Rochester, NY metropolitan area. Your proposed changes are contrary to the CRA statute and Congress' intent because they will slow down, if not halt, the progress made in community reinvestment.

The proposal that you suggest contradicts the purpose of the CRA. It allows large thrifts themselves to design watered-down CRA exams. In addition, it permits all savings and loans to serve affluent neighborhoods, and neglect low- and moderate-income neighborhoods, in rural areas and areas impacted by natural disasters.

Currently, large thrifts with more than $1 billion in assets have a "three part" CRA exam that consists of a lending test, an investment test, and a service test. Under your proposal, a large thrift can choose to eliminate either the investment or the service tests, and thus only have to pass one of those tests in addition to the lending test. Or it can choose to minimize its investment and service tests, causing the lending test to far outweigh them in the total grade.

The danger of this proposal is that large thrifts can get away with neglecting pressing community needs. Eliminating investment tests will drop the requirement to finance affordable rental housing via Low Income Housing Tax Credits as well as small business financing via equity investments. Or thrifts can abolish their service tests and not be required to place or maintain branches in low- and moderate-income communities. Without service tests, thrifts can also ignore the needs of remittances and other low-cost banking services. The "design your own easy CRA exam" option will increase the amount of abusive payday loans, check cashing, and other high cost services in low- and moderate-income communities since thrifts will reduce their provision of basic banking services after implementing their own easy exams.

Nationally, 104 thrifts with assets in excess of $1.1 trillion will be subject to the revised regulations. This represents 13 percent of the total assets of financial institution with assets over $1 billion. In New York 8 thrifts with assets of over $42 billion will be affected by this proposal.

What is perhaps more significant is the fact that many financial institutions have multiple charters. While there may be some regulatory hurdles that face these institutions, we are concerned about banks such as Bank of America, JPMorgan Chase, HSBC, and Citibank that could move a significant portion of their assets to a thrift charter, and thus reduce the proportion of bank assets subject to a rigorous CRA exam.

We saw in the past that banks moved to different states to take advantage of pro bank regulations. "Charter shopping," which does not even necessitate moving physical operations, could be the 1st step that results in the death knell of CRA as we know it.

In addition, we know that the regulators recently withdrew proposed CRA regulations that would have required downgrades for predatory loans. We are extremely concerned about the incremental changes that could potentially open the door for thrifts to have lower scrutiny for subprime loans that are predatory.

CRA and First Niagara Bank

Under CRA, banks and thrifts have an affirmative and continual obligation to serve low- and moderate-income communities. One bank affected by the proposed CRA regulations is First Niagara Bank (FNB), a thrift operating in upstate NY. It received a satisfactory rating in its last CRA exam.[1]

[1] The performance evaluation for this exam can be seen at:

In 2003, the FNB made a total of 434 1-4 family unit mortgage loans in the Rochester, NY MSA totaling $36 million. FNB's total lending marketshare was 0.8 percent in the MSA. In comparison, FNB's marketshare was

- 0.3 percent among African-American and Hispanic households, 0.5 percent less than its MSA marketshare;
- 0.7 percent among low-moderate income households, 0.1 percent less than its MSA marketshare;
- 1.0 percent among low-moderate income census tracts, 0.2 percent more than its MSA marketshare.

All Financial Institutions (AFIs) made 29 percent of their loans to low-moderate income households, while FNB made 25 percent of its loans to low-moderate income households

In 2003, FNB made a total of 55 1-4 family unit (owner-occupied) home purchase loans in the Rochester MSA totaling $5 million. FNB's home purchase marketshare was 0.38 percent in the MSA. In comparison, FNB's marketshare was

FNB received an adequate rating in its last CRA exam in lending to low- and moderate-income (LMI) borrowers. As stated in the performance evaluation, "FNBs performance in lending to LMI borrowers was adequate. Starting in 2001, the institution's percentage of the number of loans to LMI borrowers, at approximately 20 percent of the number of assessment area loans, was reasonable when compared to the percentage of the HMDA aggregate data reporters for the average of the two- year period from 2001 through 2002. The institution's dollar volume performance percentages were below that necessary to recognize satisfactory standards when compared to the HMDA aggregate reporter's 2002 activity, or the percentages of the HMDA aggregate reporters for the two- year period."[2]

Although FNBs performance in percentage of dollar volume was below satisfactory, the institution's performance improved during 2001 and 2002, and continued in the first six months of 2003, indicating a positive trend. If the proposed changes to the CRA exam are adopted, First Niagara would have little incentive to improve or maintain its performance in the LMI lending category.

Seven depository institutions with assets over $1 billion include the Rochester MSA in their assessment area. In addition, many large lenders and credit unions are active in the mortgage market.

Nevertheless, a GRCRC member has illustrated the importance of First Niagara Bank's role in meeting credit needs. They are in the process of negotiating with FNB to participate in its First Home Club, a program that ensures access to credit for clients like Ms. A, a single mother of two children, by providing her with a mortgage loan. Such clients often have some funds for down payment assistance but not quite enough. While they have a good credit history and a low debt load their income does not qualify them for a USDA Rural Development loan with a subsidy on the rate. Nor is their income quite high enough to qualify them for a conventional loan due to PMI and larger down payment requirements.

Such clients benefit from participating in programs like a First Home Club where they are able to receive a grant for some down payment and closing costs. Without such programs potential homeowners are unable to purchase the home that suit their needs.

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[2] ibid, p. 15.

FNB's participation would allow clients in more rural areas to be able to use the First Home Club to decrease the cost of the loan and increase affordability. The current CRA regulations provide the incentive for banks like FNB to develop or participate in innovative and fiscally responsible products such as First Home Club that help low-moderate income people. The proposed regulations, however, weaken the incentive in two ways:

- By allowing banks to determine how much the service and investment tests should weigh during a CRA exam. Why would FNB participate in something that might only give them credit under the service test such as First Home Club when it could receive more CRA credit for more profitable investments?

- By allowing all lending, investments and services in rural areas to count during CRA exams, regardless of whether these activities benefit low- and moderate-income residents. Why would FNB participate in First Home Club when it could receive CRA credit for investing in a golf course?

- With respect to the investment component in the Rochester MSA, FNB "was responsive to the community development needs of the [Rochester MSA] assessment area through its community development investment and grant activity. Qualified investments and grants provided funding for affordable housing and neighborhood revitalization groups, and revitalization efforts in the Rochester downtown business district."[3] The performance evaluation notes, however, "None of the Monroe County offices is located in LMI geographies."[4] Nor are any located in the city of Rochester. Under the proposed regulatory changes, FNB could put more weight on its investment test, where it is doing better, and less weight on its service test, where it is not doing as well. This goes against the letter and the intent of the Community Reinvestment Act.

If the Office of Thrift Supervision (OTS) adopts the proposed changes, thrifts such as FNB would no longer be required to respond to such an array of community needs. The institution could respond arbitrarily to a few, enough to fulfill its duty, while overlooking vitally important others. If the OTS accepts this proposal, it will fail to uphold the mandate of the CRA and unravel a system of examination that is functioning with a high level of success.

In addition, your proposal regarding rural areas and natural disasters lacks any justification. Congress enacted CRA in order to stop redlining and disinvestment from low- and moderate-income communities. Under your proposal, large thrifts will suffer no CRA penalty if they provide community development financing to affluent communities, while overlooking low- and moderate-income communities, in rural areas and areas impacted by natural disasters.

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[3] Ibid, p. 48.
[4] Ibid, p. 49.

Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA)

Finally, you would reduce vital opportunities for community groups and thrifts to meet with your agency to discuss CRA and anti-predatory lending matters when thrifts are merging. Under current regulation, your agency is required to hold two meetings to ensure that all facts and impacts of proposed mergers are thoroughly vetted. Your proposal would allow the OTS, at its own discretion, to hold only one meeting or decline to hold a meeting. This is inadequate as merging institutions often conceal important data and information regarding CRA and fair lending compliance, and will only provide this information if repeatedly prodded by community groups during meetings with the regulatory agency.

Over the years, CRA has been effective because the banking agencies have issued regulations in a careful and uniform manner. Once again, your unilateral and reckless proposal threatens the gains in community revitalization made possible by CRA. We urge you to withdraw this latest proposal, which is so ill-conceived that it has not been issued by the other banking agencies.

Yours truly,

Ruhi Maker, Esq.

Ruhi Maker, Esq.