



# Greater Upstate Law Project, Inc.

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January 21, 2005

Via email: [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G St. NW  
Washington DC 20552

**Attention: No. 2004-53 & 2004-54**

To Whom It May Concern:

The Greater Upstate Law Project (GULP) urges you to withdraw the recently 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.

The Greater Upstate Law Project, Inc. is a 501(c)(3) created in 1973 as a resource and support center for legal services programs throughout New York State (outside of New York City). On January 1, 2004, GULP merged with the Public Interest Law Office of Rochester, a not-for-profit law firm that provides free, civil legal services to low-income people, thus combining our talent and resources to provide a powerful statewide blend of policy advocacy, substantive law training, technical assistance, and impact litigation as well as targeted direct client services through our offices in Rochester, Albany and White Plains.

GULPILOR is a significant player in shaping and implementing policies that impact the delivery of critical services to poor and low-income New Yorkers. Our legal expertise in an array of poverty law areas is well known and deeply respected. As an active support center for, and partner with, the local legal services community, we bring to our policy work the real life experiences of those working directly with individuals and families in need. Our work in the legislative, administrative and judicial arenas allows us to fully represent the needs of our clients. We take a multi-issue, multi-dimensional approach to our work.

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 Albany, 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.

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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 investment and service tests, and thus only have to pass a 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% 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 effected 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 like 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 first 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 TrustCo

Under CRA, banks and thrifts have an affirmative and continual obligation to serve low- and moderate-income communities. One bank affected by proposed CRA regulations is TrustCo Bank, National Association. The institution is headquartered in Schenectady, NY, and is a subsidiary of TrustCo Bank Corp NY. The OCC administered a CRA exam to TrustCo in September of 2001, at which time it rated satisfactory.<sup>1</sup>

In 2003, TrustCo made a total of 2,298 1-4 family unit mortgage loans in the Albany, NY MSA. TrustCo's total lending marketshare was 5.0 percent in the MSA. In comparison, TrustCo's marketshare was

- 5.0 percent in the City, the same as its MSA marketshare;
- 3.0 percent among African-American and Hispanic households, 2.0 percent less than its MSA marketshare;
- 5.0 percent among low-moderate income households, the same as its MSA marketshare;
- 3.0 percent among low-moderate income census tracts, 2.0 percent less than its MSA marketshare.

All Financial Institutions (AFIs) made 23 percent of their loans to low-moderate income households, while TrustCo made 21 percent of its loans to low-moderate income households.

In its last OCC CRA exam, TrustCo's lending to Low- and Moderate-Income (LMI) borrowers was rated 'high satisfactory,' and its penetration of LMI geographies in the assessment area was 'good'. The institution also aided a number of community development projects, many aimed at curbing predatory lending to LMI borrowers. TrustCo's level of community development lending had a strong impact on the evaluation of its lending performance. The institution originated 12 Community Development Loans totally about \$ 8 million dollars during the evaluation period. According to the exam, these loans met the needs for affordable housing, small business financing and essential community services for LMI families, for example:

- TrustCo provided one small business with a \$ 2.4 million loan to purchase an office building located in a low-income geography in the city of Albany. At the time the building was purchased, it had a 50% vacancy rate. Now the property is improved and is at full-occupancy, helping to revitalize the surrounding community and promote job creation.
- TrustCo refinanced and reduced the interest rate on an existing \$ 1.6 million dollar mortgage for an area non-profit labor organization. The property is located in a LMI geography, and by lowering the interest rate TrustCo allowed the rent to be lowered, filling vacancy in the building and supporting permanent job creation, retention and improvement.

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<sup>1</sup> The performance evaluation for this exam can be seen at:  
<http://www.occ.treas.gov/ftp/craeval/jun01/22844.pdf>

- TrustCo extended a \$750 thousand credit line to an affordable housing organization which provides affordable housing loans, home purchase counseling and debt counseling for individuals of low or moderate-income.

According to the exam, found that TrustCo provides loans for community development projects, but it also provides innovative and flexible loans targeted at LMI borrowers. One program that TrustCo has continued since its conception in 1990 is the Affordable Housing Program (AHP). AHP offers 100% financing, with 90% financing through a maximum 30 year first mortgage and 10% financing through a simultaneous maximum 20 year second mortgage. The second mortgage and the first mortgage are at the same interest rate. The program is available to first time homebuyers with a family income not exceeding moderate-income guidelines. Closing costs are reduced by \$500 from that of conventional mortgages. Sixty-five loans of this type were offered in the assessment area during the evaluation period.

The Current CRA regulations provide the incentive for banks like TrustCo to develop or participate in innovative and fiscally responsible products such as the Affordable Housing Program 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 should Banks participate in Affordable Housing Programs when they could receive more CRA credit for more profitable investments?
- By allowing all lending, investment and services in rural areas to count during CRA exams, regardless of whether these activities benefit low- and moderate-income residents. Why should Banks participate in the Affordable Housing Program when they could invest in a golf course?

TrustCo received a high satisfactory rating in the service section of its CRA exam. The institution's service delivery systems are accessible to geographies and individuals of different income levels, and branch distribution in low-income geographies is excellent in relation to the population distribution. Office hours and services are similar in all locations regardless of income level of the geography.

However despite what the exam states local community groups believe that Trustco does a bare minimum to work with them. They are extremely concerned about the reduction in community reinvestment activity if the proposed regulations are adopted.

Despite the rating of high satisfactory in service, there are instances when Trustco Bank has taken a harsh and unfair approach towards mortgage servicing, to the detriment of homeowners. Trustco's stated business policy is that they will not tolerate any delinquency. The vast majority of mortgage lending banks and services attempt to work with homeowners who fall behind on their mortgage, at least during the first three months of the delinquency. The industry standard is that foreclosure is not initiated until after the mortgage is three months in default. Trustco, however, prides itself on not

needing or wanting a loss mitigation department, and sends a borrower into foreclosure after one or two mortgage payments are late.

Also contrary to industry standard for prime lending institutions, Trustco does not offer escrow accounts for its borrowers to save for tax and insurance payments. This practice is deceptive; Trustco advertises that it has lower settlement costs than other banks, however, they are comparing themselves to lenders who include prepaid escrows in their settlement fees and mortgage payments. Many first-time homeowners are unaware of this nuance in Trustco's practices, and often do not understand that taxes need be paid for separately. If a homeowner is unable to make tax or insurance payments, even for the current year, Trustco either pays tax lien and demands immediate payment in full from the homeowner, or initiates foreclosure proceedings against the homeowner. This practice occurs even if the homeowner is current with their mortgage payments to Trustco.

Patricia Hughes is a lower-income homeowner who purchased her property in Albany, New York in 2001 with a mortgage from Trustco. In 2003, Ms. Hughes was unable to make a lump sum payment to the county for her property taxes. She entered into a monthly payment agreement to pay her taxes and paid them in full by July 2004. Ms. Hughes was still due for the current year's property taxes, at that time. (Ms. Hughes had paid her school taxes for 2004.) In September 2004, however, Trustco stopped accepting Ms. Hughes' monthly mortgage payments and declared her in default on the mortgage and note because she had not paid the current year's property taxes. Ms. Hughes has saved her monthly mortgage payments from September 2004 through the present month, and is saving money towards her taxes. Trustco, however, refuses to work with Ms. Hughes and threatened that if she is unable to pay the taxes owed to the county by January 25, 2005, plus pay an additional \$838.00 in attorneys' fees and costs, they will initiate formal foreclosure proceedings.

This example of harsh and unreasonable service practices illustrates the dangers that would arise if the proposed changes to the CRA exam were enacted. Even when TrustCo was rated satisfactory, cases of unfair service practices arose. If thrifts like TrustCo were subject the revised CRA test, they could make loans in fair percentages to low- and moderate-income borrowers, then bully these clients without fear of reprimand. Many more borrowers would be treated like Ms. Hughes.

The institution ranked low satisfactory in the investment section of the CRA exam. The bank's community investments were adequate in relation to its size and resources. In its investing activities, the institution responded positively to pressing community needs. Trustco made a \$1 million investment in the Statewide Zone Capital Corporation of New York. The corporation was formed in 1999 to promote development of new business, expansion of existing business, and the development of human resources within 51 economic development zones. These zones are located in economically depressed areas of NY with high unemployment and poverty. Trustco was the first bank to invest in this corporation and has been a model to others seeking qualified CRA investments.

One of the main arguments for the current proposal is that the investment test forces thrifts to make sub-optimal investments. However, TrustCo's case, like many others, shows that the current exam does not coerce banks to make investments when another form of financing may be more appropriate. This is evidenced in that Trustco had a community development loan to investment ratio of approximately 8:1. This ratio is not consistent with the rhetoric about depository institutions being forced into inefficient investments. The current exam tolerates a much higher level of community development lending than investment while allowing the institution to attain a satisfactory rating.

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.

#### 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,

Kirsten Keefe Esq.

