From: Tom Feltner [mailto:tfeltner@woodstockinst.org]
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To: Comments
Subject: RIN number 3064-AC97

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov
RIN number 3064–AC97

Dear Mr. Feldman:

I am writing from Woodstock Institute, a Chicago-based research, policy development, and advocacy nonprofit organization, to comment on the final Interagency Questions and Answers Regarding Community Development ("Questions and Answers") entering into effect on January 6, 2009, and to comment on the two additional Questions and Answers proposed in the January 6, 2009 notice.

Specifically, I would like to comment on the agencies' final guidance on purchased loan participations (Q&A §___.22(a)(2)–6), and constraints on affiliate lending (Q&A §___.22(c)(2)(i)–1), and provide comments on two revised Questions and Answers provided in this notice.

Comments on final Questions and Answers included in this notice

Q&A §___ .22(a)(2)-6 Question and Answer regarding purchases of loan participations

Woodstock appreciates the agencies' acknowledgement of the ongoing problem of using purchased loans to inflate CRA Lending Test scores. However, the language used in the Question and Answer regarding purchases of loan participations (Q&A §___ .22(a)(2)-6) is insufficient to prevent this practice. In comments submitted by Woodstock Institute in response to the July 11th 2007 notice, Woodstock stated its opposition to giving equal credit to loans that are directly originated by banks or thrifts and loans originated by third parties and purchased by banks or thrifts. We reiterate our opposition to this practice and believe that the revised language stating that examiners will consider whether mortgages or participation in a loan have been resold merely to inflate their value for CRA purposes when they evaluate an institution's lending activity is insufficient to prevent the continued inflation of scores under the Lending Test.

While we understand there is value to loan purchases and loan participation, we feel that this value is not equal to that of directly originating a loan. Pools of purchased loans are often passed from bank to bank in order to give the purchasing institution a better result on the CRA lending test. Under the final guidance, there is no consideration of the terms of the loans being purchased, and loans can be purchased multiple times by different institutions. After the initial purchase from the originating institutions, these purchased loans and loan participations offer little value to low- and moderate-income communities. In the current mortgage market where low- and moderate-income and communities of color are starved for bank originated, prime loans, we maintain that expanding the definition of "purchase loans" to include transactions where banks purchase only parts of loans will only further serve to reduce the importance of directly originated loans and could serve as a disincentive for banks to directly lend to underserved communities.

Woodstock Institute encourages the agencies to apply the language in the final guidance rigorously to insure that the purchased loans and loan participations are not resold merely to inflate their value for CRA purposes. Woodstock Institute will continue to raise the importance of this issue through its ongoing meetings with regional examination staff.

Q&A §___ .22(c)(2)(i) Constraints on affiliate lending

Woodstock is disappointed that the agencies will continue to permit the equal crediting of loans originated or purchased by the affiliate (Q&A §___ .22(c)(2)(i)). While we believe that Question and Answer will ensure that loans are not "double counted" under the CRA Lending Test, we feel that giving loan purchases equal credit to loan originations already reduces the importance of direct originations of mortgages to underserved markets. Direct originations will once again be downgraded if bank holding companies are allowed to swap loans amongst affiliates in order to boost performance on the CRA Lending Test.

Woodstock Institute encourages the agencies to apply the language in the final guidance rigorously to ensure that loan purchases by affiliates reflect actual business decisions about the allocation of banking activities, and are not designed solely to enhance their CRA evaluations. Woodstock Institute will continue to raise the importance of this issue through its ongoing meetings with regional examination staff.

Comments on revised Questions and Answers included in this notice

Q&A §___.12(h)–8 What is meant by the term "primary purpose" as that term is sued to define what constitutes a community development loan, a qualified investment, or a community development service?

Woodstock Institute supports the agencies' proposals to change its "all or nothing" CRA consideration policy for community development loans, qualified investments, and community development services to "pro rata" consideration. We believe that it will spur the construction of low- and moderate-income housing by allowing banks to receive CRA credit for investment in mixed-income housing development, which, in the Chicago region, represents a significant portion of affordable housing development. In particular, it will allow additional credit for financial institutions participating in mixed-income Low Income Housing Tax Credit projects. In addition, the following revisions should apply:

- Pro rata consideration should be applied to instances where a governmental entity requires a set aside and in instances where a developer voluntary designates a portion of a project as low- and moderate-income units. Including instances of voluntary designation will likely facilitate investment in projects receiving density bonuses for low- and moderate-income unit designation, and not limit private sector participation to mandatory designation, which is often the result of public sector participation in the project.

- The pro rata share of the project should be determined, in the cases of affordable housing development, according to the percent of a bank or thrift's contribution to the total development cost of the affordable portion of a project. For example if a bank or thrift contributes 20 percent of the necessary funding for project that is ten percent affordable, then the bank or thrift should receive credit for two percent of the project's total development costs.

- Pro rata consideration should be included for both housing and projects with community development purposes, including economic development projects, and mixed use commercial development.

Q&A §___.12(h)–8 Community development includes community services targeted to low- and moderate-income individuals. What are examples of ways that an instition could determine that community services are offered to low- or moderate-income individuals?

Woodstock Institute supports the adoption of the revised language to determine if community services are targeted to low- and moderate-income persons in circumstances where individual income information is unavailable.

Comments on CRA-related regulation not included in this notice

Assessment area definitions do not accurately reflect market geographies

There needs to be significant changes to the designation of CRA assessment areas. Currently, CRA assessment areas are designated by the financial institutions and are meant to represent the areas where banks and thrifts have branches. Initially, this designation was meant to reflect the area from which a bank was taking deposits. In the modern financial services industry, however, banks and thrifts are no longer tied to traditional branch networks for deposits and banks frequently do business such as mortgage lending well beyond the areas from which they take deposits. Internet banks and insurance banks, for example, have no traditional bank branch presence and take deposits from all over the country, yet these institutions are able to designate geographically limited assessment areas that often do not reflect their true area of business.

Additionally, banks and thrifts have the ability to lend within and outside of their assessment areas, yet only loans originated within their assessment area are fully considered under CRA. Federal Reserve research has shown that CRA-regulated banks are more likely to originate higher cost loans outside of their assessment areas than within. This indicates that CRA coverage is effective at encouraging banks to originate lower cost mortgages. We believe that in, the case of the lending test, all loans originated by an institution should be considered.

Bank branch location is not an effective proxy for the provision of financial services to low- and moderate-income persons

We also would like to comment on the implementation of the large bank CRA Service Test. A report released by Woodstock Institute examined the service test performance evaluation of a number of Chicago area large banks. It found substantial inconsistencies in the analysis of bank branch data and limited descriptions and inconsistent data on retail accounts and community development services. Among a number of recommendations, the reports stated that regulatory agencies must collect standardized data on new and existing retail checking and savings accounts. These data should include information on account holder census tract, year opened, and average annual balance. The agencies must develop more performance-based measurements of the provision of banking services and retail deposit accounts of lower-income households. Also, branch distribution should be measured in a consistent manner against the percent of households living in low-and moderate income neighborhoods in the bank's assessment area.

We appreciate the opportunity to comment on both the final and revised Questions and Answers and encourage the agencies to consider the additional changes to CRA recommended as part of these comments.

Sincerely,

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