GREATER ROCHESTER
COMMUNITY REINVESTMENT COALITION
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April 6, 2004

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
RE: Regulation BB; Docket No. R-1181
Via Email: regs.comments@federalreserve.gov

Docket No. 04-06
Communications Division
Public Information Room
Mailstop 1-5
Office of the Controller of the Currency
250 E Street, SW
Washington, DC 20919
Via Email: regs.comments@occ.treas.gov

Robert E. Feldman
Executive Secretary
ATTN: Comments, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RE: 12 CFR Part 345
Via Email: comments@fdic.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: No. 2004-04
Via Email: regs.comments@ots.treas.gov

RE: Community Reinvestment Act Regulations—Joint notice of proposed rulemaking

Dear Regulator:

I am writing to you on behalf of the Greater Rochester Community Reinvestment Coalition (GRCRC) to comment on the proposed changes to the Community Reinvestment Act (CRA) regulations.

GRCRC was convened in 1993 to generate discussion about the lending patterns in Rochester. Since then, the Coalition has released six 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 Federal regulators who have oversight of the banks.

GRCRC has a membership of over 40 locally based not-for-profits and individuals. GRCRC monitors the lending and investment performance of Charter One Bank, M&T, Fleet, HSBC, Chase, Citigroup and Canandaigua National Bank.

CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. Your proposed changes are contrary to the CRA statute because they will halt the progress made in community reinvestment.

The proposed CRA changes will thwart the Administration's goals of improving the economic status of minorities and immigrants, and expanding homeownership opportunities for emerging populations by 5.5 million homeowners. Instead, the proposed CRA changes would facilitate predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws and regulations.

The proposed changes include three major elements: 1) provide streamlined and cursory exams for banks with assets between $250 million and $500 million; 2) establish a weak predatory lending compliance standard under CRA; and 3) expand data collection and reporting for small business lending and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage imposed by the first two proposals. In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas under their proposal, and thus missed a vital opportunity to continue CRA's effectiveness.

<u>Streamlined and Cursory Exams</u>. Under the current CRA regulations, large banks with assets of at least $250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between $250 and $500 million.

The proposed changes would reduce the rigor of CRA exams for 1,111 banks that account for more than $387 billion in assets.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of affordable rental housing needed by large numbers of immigrants and lower income segments of the minority population. Likewise, the banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services.

GRCRC and its members work closely with area banks on investments and services in Rochester's underserved communities, along with the fact that we specifically mention a bank's investments and services, or lack thereof, in our comment letters, help improve services and investments in the Rochester community. Without the more rigorous exams for banks with $250-$500 million in assets, we will lose a valuable tool in improving the Rochester area.

Thus, the effectiveness of the Administration's housing and community development programs would be diminished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit needs if they eliminate the investment and service test for a large subset of depository institutions.

<u>Predatory Lending Standard</u>. The proposed CRA changes contain an anti-predatory screen that will actually perpetuate abusive lending. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The asset-based standard falls short because it will not cover many instances of predatory lending. For example, abusive lending would not result in lower CRA ratings when it strips equity without leading to delinquency or foreclosure. In other words, borrowers can have the necessary income to afford monthly payments, but they are still losing wealth because of a lender's excessive fees or unnecessary products.

The Public Interest Law Office of Rochester (PILOR), a member of the GRCRC, has dealt with many clients who have mortgages that do not appear to violate consumer protections laws and do not violate the asset-based standard for predatory lending if we rely solely on loan documents in assessing the loans. However, closer inspection usually reveals multiple violations that should result in downgrading CRA ratings.

One such case was of a Vietnamese couple with three young children who had a good mortgage on their home and a small amount of credit card debt. A high-cost lender persuaded them to refinance their prime mortgage and their credit card debt into two separate secured loans that raised their monthly payments by over $100 and the total cost of their debt by $111,000. In essence, the two loans reduced the interest rate on a very small portion of their debt (credit cards) while greatly raising the interest rate on the larger part of their debt (mortgage) and converted their unsecured debt into secured debt. On closer inspection, it was easy to see the couple received no net tangible benefit from this transaction.

Another case was of an elderly widowed Caucasian woman, who was employed as a part-time substitute teacher, but was being forced into retirement. She obtained a 15-year refinance loan through a mortgage company that immediately sold the loan to a high-cost lender without the woman's knowledge. The mortgage company had promised that the loan would consolidate all her delinquent bills, give her $5,000 in cash to pay her personal debts, and would lower her monthly payment. The mortgage company did not give her $5000 as she was promised. They did reduce her monthly payment, but only because the loan provided for a balloon payment of nearly $60,000. In the end, the refinanced loan increased her cost of credit by over $80,000.

In the above cases the refinanced loans were affordable and did not look predatory from the loan documents. However, in both cases and many others we have come across, a little investigation revealed that the loans violated laws that should result in downgrading an institution's CRA rating. It was only through further investigation that these loans were revealed to be predatory. Without a thorough investigation, many loans that do in fact violate ECOA, HOEPA, RESPA, TILA, and the FTC Act will fall though the cracks under the proposed changes. GRCRC suggests that a sample of loans included in an institution's CRA exam should be the subject of further investigation, which would include calculating net tangible benefit and investigating for any of the above violations. This process should include interviewing the loan recipient and examining previous loan documents, such as previous mortgages and bills paid by the new loan.

In the final rule, we also urge the agencies to expand the list of practices triggering adverse treatment under CRA to include the following practices that are harmful.

Negative Amortization--Consumers gain no discernable benefit from negative amortization except in the limited cases of reverse mortgages for senior citizens and the terminally ill. The Home Ownership and Equity Protection Act (HOEPA) prohibits negative amortization clauses in high-cost home loans. The concern underlying the negative amortization provision of HOEPA is equally valid for all home mortgage and consumer loans.

Single Premium Credit Insurance Policies--Under single-premium policies, borrowers pay the same lump sum premium for insurance or debt cancellation coverage, whether they make their loan payments through to maturity or prepay their mortgages. Moreover, single-premium policies are often financed as part of the loan. In some cases, borrowers have been sold single-premium credit insurance products even though they were too old to qualify for such insurance. The result, borrowers often pay for needless insurance and assume more onerous debt obligations. If borrowers want credit life insurance or lenders require it, lenders could simply charge monthly insurance premiums. Hence, there is no economic justification for credit insurance policies or debt suspension or cancellation policies that are marketed on a single-premium basis.

Steering--Steering occurs when subprime lenders persuade unsuspecting borrowers, who are actually eligible for prime loans, to agree to loans at higher subprime rates. Steering is exacerbated by the use of yield-spread premiums, which reward mortgage brokers for convincing borrowers to pay higher interest rates than the lenders are willing to take.

Payments by lenders to home-improvement contractors from mortgage proceeds other than by instruments payable to the borrower or jointly to the borrower and the contractor, or according to a written escrow agreement -- Checks made solely payable to home-improvement contractors can be major inducements to home-improvement scams. Such checks are already prohibited by HOEPA.

Mandatory Arbitration -- Mandatory Arbitration clauses insulate unfair and deceptive practices from effective review and relegate consumers to a forum where they cannot obtain injunctive relief against wrongful practices, proceed on behalf of a class, or obtain punitive damages. Arbitration can also involve costly fees, be required to take place at a distant site, or designate a pro-lender arbitrator.

Any standard that does not address the above problematic practices will allow CRA exams to be used to cover up predatory lending.

In the past, insured depository institutions have been responsible for some of the subprime lending abuses, however, the bulk of the problem consists of predatory lending by nonbank mortgage lenders or consumer finance companies. Increasingly, such lending is being done by nonbank subsidiaries and affiliates under the bank holding company or financial holding company umbrella. Insured banks and thrifts have a choice whether to locate their subprime lending activities within the depository institution or outside in a nonbank subsidiary or thrift. Given that choice, insured banks and thrifts and/or their parent companies can profit from subprime activities, while avoiding reputational risks and safety and soundness concerns, by pushing subprime operations out to nonbank subsidiaries and affiliates. Hence, making all of the above suggested anti-predatory protections moot. A bank or thrift should not be permitted to evade CRA scrutiny by pushing out its subprime activities to a nonbank subsidiary or affiliate.

Finally, when considering evidence of discriminatory and other illegal and abusive credit practices by nonbank subsidiaries and affiliates, regulatory agencies should consider lending in all geographic areas not just in the CRA assessment areas. The concept of CRA assessment area is foreign to the business plans of nonbank subsidiaries and affiliates. In fact, their scope is far more geographically diverse and not driven by branch locations. Nonbank subsidiaries and affiliates' CRA lending should be scrutinized in a manner that reflects the scope of their lending activity and not be limited to loans made in CRA assessment areas. Otherwise, many predatory loans will slip past any regulatory anti-predatory screen regardless of the robustness of the anti-predatory standard.

CRA exams will allow abusive lending if they contain the proposed anti-predatory standard that does not address the problems we have discussed above and other problematic areas such as packing of fees into mortgage loans, high prepayment penalties, loan flipping, and other numerous abuses. Rigorous fair lending audits and severe penalties on CRA exams for abusive lending are necessary in order to ensure that the new minority homeowners served by the Administration are protected, but the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending, the proposed standard will frustrate CRA's statutory requirement that banks serve low- and moderate-income communities consistent with safety and soundness.

Enhanced data disclosure. The federal agencies propose that they will publicly report the specific census tracts of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods with small business loans. Also the regulators propose separately reporting purchases from loan originations on CRA exams and separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

The positive aspects of the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use the new data to provide less weight on CRA exams to high cost loans than prime loans and assign less weight for purchases than loan originations.

In fact, in our data analysis and comment letters, GRCRC separates originations from purchases to determine how much each bank is using purchases to boost its CRA and fair lending performance, particularly in low-moderate income and minority census tracts. We believe that the federal agencies should do this as well, and that banks should receive more credit for doing the hard work of originating loans rather than purchasing them.

As an example of this we are including a table summarizing how all financial institutions, on average meet their CRA and fair lending obligations. In 2002 all financial institutions in the Rochester MSA originated 77 percent of their CRA-related (originations and purchases) home purchase loans, 85 percent of their refinance loans and 83 percent of their total lending. However, they originated substantially lower percentages of their CRA-related lending (originations and purchases) in low and moderate income census tracts and in minority census tracts. Thus, they boosted their CRA and fair lending in these areas through more purchases than was the average for the MSA, particularly for home purchase lending.

AFI 2002 Percentage of Originated and Purchased Mortgage Loans That Are Originated by Type and Purpose (1-4 Family Units)						
Rochester MSA HMDA 2002						
	% of Loans Originated by Type (1-4 Family Dwellings)					
AFI	**Gov't**	**Conv**	**Purchase**	**Refinance**	**Home Imp.**	**Total**
MSA	58.9%	84.6%	77.3%	84.8%	96.8%	82.6%
City	52.3%	76.5%	67.0%	81.2%	96.9%	74.8%
Black HH	66.8%	91.0%	81.0%	87.8%	99.1%	84.8%
Hispanic HH	71.1%	89.9%	83.5%	91.6%	95.9%	87.0%
Asian HH	67.3%	91.7%	87.9%	94.3%	100.0%	90.7%
<50 MFI HH	70.9%	93.3%	86.3%	91.6%	98.7%	89.9%
50-79 MFI HH	71.0%	95.1%	86.3%	90.7%	98.4%	89.3%
50-79 Min CT	44.6%	66.8%	57.2%	78.3%	95.7%	68.9%
80-100 Min CT	38.6%	67.6%	57.2%	71.5%	97.7%	68.5%
Low Inc CT	43.5%	66.9%	57.5%	71.8%	98.2%	68.0%
Mod Inc CT	51.9%	77.3%	67.0%	83.7%	98.1%	77.1%
Non-Owner Occ.	17.6%	82.6%	81.3%	77.2%	95.9%	79.4%
	Difference between Underserved Community and MSA					
	(A positive number means that AFI originate a higher percentage of their loans to that group than for the Rochester MSA as a whole.)					
	Gov't	**Conv**	**Purchase**	**Refinance**	**Home Imp.**	**Total**
City	-6.7%	-8.1%	-10.3%	-3.6%	0.1%	-7.8%
Black HH*	7.8%	6.3%	3.7%	3.1%	2.3%	2.2%
Hispanic HH*	12.2%	5.3%	6.2%	6.9%	-0.9%	4.3%
Asian HH*	8.4%	7.1%	10.6%	9.5%	3.2%	8.1%
<50 MFI HH*	12.0%	8.7%	9.0%	6.8%	1.9%	7.3%
50-79 MFI HH*	12.0%	8.7%	9.0%	6.8%	1.9%	7.3%
50-79 Min CT	-14.4%	-17.8%	-20.1%	-6.4%	-1.1%	-13.7%
80-100 Min CT	-20.3%	-17.0%	-20.1%	-13.2%	0.9%	-14.1%
Low Inc CT	-15.4%	-17.8%	-19.9%	-12.9%	1.4%	-14.6%
Mod Inc CT	-7.0%	-7.4%	-10.3%	-1.1%	1.3%	-5.5%
Non-Owner Occ.	-41.3%	-2.1%	4.0%	-7.5%	-0.9%	-3.2%
* The income and race data were not included for most of the loans purchased. Therefore, these numbers cannot be calculated accurately.						

Missed Opportunity to Update Exam Procedures: The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams. Lastly, the proposed changes do not address the need to update assessment areas to include geographical areas beyond bank branches. Many banks make a considerable portion of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams.

The proposed changes to CRA will directly undercut the Administration's emphasis on minority homeownership and immigrant access to jobs and banking services. The proposals regarding streamlined exams and the anti-predatory lending standard threaten CRA's statutory purpose of the safe and sound provision of credit and deposit services. The proposed data enhancements would become much more meaningful if the agencies update procedures regarding assessment areas, affiliates, and the treatment of high cost loans and purchases on CRA exams. CRA is simply a law that makes capitalism work for all Americans. CRA is too vital to be gutted by harmful regulatory changes and neglect. Thank you for your attention to this critical matter.

Yours truly,

Ruhi Maker, Esq.
Co-convenor

Cc: Senator Charles Schumer
Senator Hilary Clinton
Rep. Louise Slaughter