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BANKING DEPARTMENT
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Office of the Comptroller of the Currency
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Board of Governors of the Federal Reserve System
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Federal Deposit Insurance Corporation
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Office of Thrift Supervision
ID OTS-2010-0019

Re: Request for Comments – Community Reinvestment Act Regulation

To Whom It May Concern:

The New York State Banking Department (the Department) appreciates this opportunity to comment on potential revisions to the Community Reinvestment Act's (CRA) implementing regulations.[1] As one of only five states in the country that has a state-specific CRA statute,[2] the Department has an interest in any changes made to federal examination processes, because such changes may affect the way we conduct our own CRA exams.

The Department strongly supports revising the CRA regulations to produce examinations that more closely analyze a financial institution's responsiveness to community needs. CRA examinations must review performance both quantitatively and qualitatively and provide ratings based on community impact rather than the attainment of preset benchmarks. Moreover, what seems to be missing most from current examination processes is the flexibility that encourages financial institutions to be innovative in

[1] 12 CFR Part 25; 12 CFR Part 228; 12 CFR Part 345; and 12 CFR Part 563e.
[2] Banking Law §28-b and implementing regulations General Regulations of the Banking Board (GRBB) Part 76.

responding to community needs while being compatible with their business strategies. This renewed emphasis on qualitative measures, including responsiveness, innovation and flexibility, must be tempered with the continued requirement to demonstrate outcomes. Nevertheless, CRA has been a valuable tool since its inception in promoting the revitalization and stabilization of low- and moderate-income (LMI) communities. Periodic reviews of the regulations only strengthen CRA's effectiveness. Thus, this review is both welcome and necessary.

Below are the Department's responses on those aspects of the CRA regulations that the federal agencies have solicited specific comment.

Geographic coverage:

The Department supports the establishment of different standards for delineating an institution's assessment areas based on the size and business strategy of the financial institution. Thus, *small community banks* that operate entirely within a single state should be required to delineate their assessment area(s) based on their branch locations. These banks are local in scope and should be judged on their activities conducted in the communities where their branches are located.

However, *intermediate small and large retail banks operating in a single region* should be allowed to delineate assessment areas that include both the communities surrounding the physical location of their branches together with communities outside of their branch network, *but* still within the states in which the institutions have branches. CRA credit for activities in those communities outside of the branch network would be limited to community development. If there is a concern that institutions will neglect the communities within their branch networks, then regulators should be allowed to establish a maximum percentage for the level of activity conducted in communities located outside of the branch network that would be included in an assessment area, based on the asset size of the institution. Allowing these institutions to include communities outside of their branch network recognizes that the larger financial institutions do business beyond the physical location of their branches. To the extent that this activity involves community development, it should be considered for CRA credit.

Although activities outside of the branch network of a financial institution are currently eligible for CRA consideration, such consideration is given only when the financial institution can first demonstrate that it has adequately met the needs of the communities surrounding its branches. This limitation hinders community development in areas where there are no bank branches. Thus, it particularly harms rural areas where bank branches are few in number. By allowing these larger retail institutions to include *as part of their assessment area(s)*, communities outside of their branch network, the CRA regulations would actively encourage the revitalization and stabilization of more communities, in particular those communities without branches, but in desperate need of development.

By the same token, *large institutions operating nationwide* should be allowed to delineate assessment areas that include both the communities surrounding the physical location of their branches together with communities outside of their branch network *anywhere* in the country. As with the intermediate small and large retail financial institutions operating within multiple states, CRA credit for activities in those communities outside of the branch network would be limited to community development. Again, if there is a concern that institutions will neglect the communities within their branch networks, then regulators should be allowed to establish a cap on the level of activity conducted in communities located outside of the branch network. The rationale for delineating assessment areas in this manner for these national institutions is the same as has been stated for the regional institutions, i.e., such flexibility promotes community development in underserved areas and better aligns the goals of CRA with the business strategies of these huge institutions.

For wholesale or limited purpose institutions with one or no deposit-taking facilities, the assessment area(s) should consist of identified communities in great need of community development *anywhere* in the country. An institution would be required to show why it had chosen to include a specific community(ies) within its assessment area(s), including how responding to the needs of that community(ies) fit within the institution's CRA program. Preapproval of the assessment area(s) by the supervising regulatory agencies could either be required, or recommended. However, an institution should have flexibility to change its assessment area(s) by demonstrating a change in business strategy and/or community circumstances during a reporting period.

As an alternative, wholesale or limited purpose financial institutions could be allowed to choose to work through local and/or national community development intermediaries (e.g., The Community Preservation Corporation, or Enterprise), that would develop projects for communities in greatest need. The geographic scope for institutions choosing this option would be comprised of those communities served during a reporting period. Wholesale or limited purpose financial institutions choosing this option would still be required to demonstrate why the community(ies) affected by the development projects was chosen and how responding to the needs of this community(ies) fit within the institution's CRA program.

Regarding the use of technology to serve consumers, the Department recommends that all financial institutions be required to post their CRA performance ratings and evaluations conspicuously on their websites. This would promote familiarity with CRA among the public and provide an incentive for financial institutions to seek better performance ratings. We also recommend that the regulators permit the public to submit comments related to an institution's CRA performance directly through each agency's website. The comments would not be posted on the site, but rather would be visible only to the agency receiving the submission. Using technology in this manner would make the provision of comments more efficient for the public and therefore, more likely to occur. Although most regulators actively seek community input on CRA examinations, using the website as a portal for communication from the public allows regulators to hear from a broader section of the communities served by a financial institution.

In addition, new technology should be considered for increasing accessibility to financial education, particularly for rural communities.

CRA performance tests, asset thresholds and designations:

The Department recommends that the CRA performance tests be revised as follows:

For small and intermediate small financial institutions, regulators should add a new retail services test. The retail services test would review the terms and conditions of banks' transactional and savings accounts, their banking services and the accessibility of their services, including the openings and closings of their branches. Currently, small banks are examined solely on their lending practices and while intermediate small banks are examined for services, the inquiry is limited to an institution's provision of community development services. There is no review of the terms and conditions of an institution's transactional and savings accounts, despite the fact that LMI communities need affordable accounts. Thus, a separate test should be developed to review retail services.

For large retail financial institutions, regulators should remove community development lending from the current lending and services tests and create a new community development test that looks holistically at community development lending, investments, grants and services. The current services test for large institutions should be modified to be identical to the retail services test proposed for small and intermediate small banks for the reasons discussed above. In addition, the current investment test for large institutions should be eliminated because the relevant investments would be evaluated in the new community development test. Examining large financial institutions via a modified lending test that focuses on retail lending and a new community development test would raise the focus on community development and eliminate any institution's ability to leverage the volume of its mortgage and small business lending against the volume of its community development activities.

Wholesale or limited purpose financial institutions should be evaluated via the new community development test discussed above that would aggregate community development lending, investments, grants and services as individual components of one test.

Regarding strategic plans, financial institutions should be given the option of developing plans based on the tests applicable to their institutions' size and profile, or by permitting institutions to develop plans that meet the needs of their communities in a completely innovative fashion. These plans would focus on the impact an institution's plan would have on the community(ies) served. A financial institution opting for the strategic plan assessment would be required to develop long-term plans (three to five years) that create innovative programs to address an identified community's unique needs and would be required to show how the institution ascertained the needs of the community and how it intended to focus its efforts. Pre-approval of the plan by the institution's regulators would be required. In reviewing the plan, regulators would consider how the institution ascertained the community's needs, as well as how responsive the plan is to those needs. The measurable goals would be based on the level of improvement the institution's programs created in the identified community(ies).

For example, a strategic plan focusing on economic development programs for a particular community might be evaluated on the number of jobs, and small businesses that were created or retained, (among other things), by the end of the plan's term rather than another evaluation of home mortgage lending. Currently, a retail institution striving to be "Outstanding" is encouraged to be better than average in all lending activities. However, it is mathematically impossible for all financial institutions to be above average. An institution that chose an impact-based evaluation framework would no longer need to be all things to all communities. Allowing an institution to be innovative and responsive in developing a plan that works both for the community(ies) it seeks to serve and its business operations should make the strategic plan option more desirable to financial institutions.

Other changes to the CRA performance tests that are needed include:

- Eliminating consideration of purchased loans and investments in evaluating lending and investment performance, unless the affected institution is able to demonstrate that the purchases provided needed liquidity to the marketplace.
- Treating letters of credit related to community development as identical in value to loans.
- Evaluating the degree of board and senior management involvement in the institution's CRA program.

Affiliate activities.

The Department recommends that all HMDA-reportable, small business and small farm affiliate lending activity within an assessment area be included routinely in CRA evaluations, unless the activity is being considered as part of another CRA examination. The current practice of allowing institutions to choose whether to include this activity creates a system where only good activity is reviewed. By mandating the reporting of all affiliate lending activity, a truer picture of an institution's lending practices will be produced.

Small business and consumer lending evaluations and data:

The Department recommends that all retail financial institutions, regardless of asset size, be required to collect and submit data on all small business, small farm and automobile loan applications and originations. This data is needed to present a more complete picture of an institution's lending activities within a particular community. Although large financial institutions already provide this data, these are not the only financial institutions making these types of loans. Moreover, the federal agencies already ask for this data during their examinations, but because only the large institutions are required to collect and report it, the quality of the data is problematic for all other institutions. Thus, mandating the collection and reporting of this data will improve its quality, allow examiners to better assess each institution's lending performance, and increase transparency by making the data publicly available. However, we recommend limiting the data collection and reporting mandate for consumer lending to automobile applications and originations. In rural communities especially, auto loans address a critical community need. Thus, limiting the data reporting and collection to automobile loans seems appropriate.

Access to banking services:

As stated earlier, small, intermediate small and large retail financial institutions should be evaluated according to a retail services test that considers the affordability and safety of an institution's transactional and savings products. Where an institution has provided safe and affordable accounts for un- and under-banked consumers, CRA credit should be provided.

In addition, the Department recommends that financial institutions be required to geocode their deposits to assist in understanding whether an institution's products and services are actually serving LMI communities and to reveal the true relationship between deposits accepted and credit provided to a particular community.

Community Development:

The Department recommends several changes to better encourage financial institutions to undertake community development activities. First, as stated earlier, the performance evaluation scheme should be modified to bring all community development activities (lending, investment, services and grants) into one test for large and intermediate small financial institutions. The best community development programs provide the needed support to a community or a project, which can include one, some or all of these activities. Combining these activities into one test would encourage examiners to focus on the outcomes, rather than each separate activity.

Second, we recommend that the definition of "community development" be expanded to explicitly include activities that promote 1) the availability of affordable healthy food, 2) the construction of energy efficient buildings, and 3) the establishment of outcome-based financial education programs. While all three currently receive consideration, the importance of these activities should be reinforced by encouraging financial institutions to develop and support innovative and flexible programs to address them.

Third, the definition of community development services should be expanded to include activities other than the provision of financial services, provided that these activities are explicitly supported by and/or connected to the community development program of the institution. Thus, for example, such nonfinancial activities as assisting a community development organization in the marketing of its services by upgrading its website, or supplying employee volunteers to build or renovate houses in LMI communities would qualify as community development services. Community development projects and organizations need many types of support to succeed and all should be valued if the financial institution can demonstrate that the service was not simply a personal commitment of an employee, but rather is a deliberate and integral component of the institution's community development efforts.

Fourth, the Department recommends that the CRA regulations be modified to ensure that loans to develop (construction or permanent) or refinance multifamily buildings in LMI areas are not considered for community development credit where the development supported is luxury housing,[3] or the viability of the loan depends on displacing current LMI tenants.

Fifth, the Department recommends eliminating the double-counting currently allowed for multifamily loans that meet the definition for both community development and for HMDA-reportable, small business or small farm loans. The Department sees no logical reason for allowing any loans to be counted twice. Instead, we suggest allowing an institution to determine which test to use if its loans are eligible for consideration under more than one test. Similarly, an institution should be allowed to decide whether its home mortgage, small business and small farm loans that meet the definition for community development should be considered under the community development or lending tests. Current interagency guidance does not allow these loans to be considered for any test other than the lending test under the rationale that the institution is not disadvantaged by this limitation. However, a small business loan that has the effect of revitalizing or stabilizing a community should not be considered equivalent to a needed, but standard small business loan. While both loans may create jobs, the first would typically be done in conjunction with a community organization or government program designed to stimulate the economy in a particular community. As such, it may require more of an institution's resources, (e.g., specialized underwriting), so the institution should have the option of having the loan included under its community development lending and not merely added to its small business lending total.

Sixth, the Department recommends that the CRA regulations be modified to explicitly exclude refinanced community development loans, unless the financial institution demonstrates that the refinancing added to the stabilization or revitalization of the community. The primary goal of CRA should be to increase the credit and services available to LMI communities. To the extent that refinanced loans do not generally add resources to the community, CRA credit should not be given. However, a refinancing for the purpose of reducing payments or interest rates may be shown to stabilize a project or

[3] Loans that support housing for middle-income residents or in middle-income areas in high cost areas should continue to be considered, as they are currently.

improve the finances of a nonprofit community development organization, and as such should be considered community development and credited.

Seventh, the Department recommends discontinuing the aggregation of community development investments and grants. Whether or not the agencies decide to create a new community development test that aggregates all community development activities under one test, the consideration of community development investments should be separated from the consideration of community development grants. A financial institution that makes a $1 million investment and a $10,000 grant will see the importance of those grant dollars lost in the rounding process when both are added during CRA examinations. Yet, community development grants are of vital importance. Community development should consider four distinct activities: lending, services, investments and grants. Examiners should continue to use performance context to determine the relative merits and importance of each activity.

Ratings and Incentives:

Ratings
The Department recommends expanding the rating choices possible for evaluating all financial institutions to include "Outstanding"; "High Satisfactory"; "Satisfactory"; "Low Satisfactory"; "Needs to Improve"; and "Substantial Non-Compliance." Many stakeholders have noted the preponderance of "Satisfactory" ratings. Year after year, between 85 percent and 90 percent of all financial institutions receive this rating. The current rating system does not allow regulators to distinguish between those financial institutions that are very close to "Outstanding" and those that are slightly better than "Needs to Improve." Expanding the rating choices would provide a much clearer picture of an institution's performance, both to the public and to the institution and thereby engender more confidence in CRA evaluations. The Department notes that if these recommended additional rating choices are adopted, the federal agencies will need to adopt new standards for examination frequency.

In addition, the Department offers an alternative approach to rating financial institutions for CRA performance. Instead of attempting to provide an institution with a single overall rating, regulators should consider issuing a rating for each component of the evaluation. Thus, institutions would receive ratings (one of the rating categories suggested above for Lending (all institutions), Services (all institutions except wholesale) and/or Community Development (all institutions except small). This would have the effect of focusing attention on the importance of each specific performance component and recognize that a rating of "Outstanding" on one test does not excuse "Substantial Non-Compliance" on another component. Additional adjustments would be needed to clarify what effect a rating below a certain level in any one or multiple categories would have on an institution's applications for banking activities.

Other suggested changes to the current rating system include the following:

- Provide separate ratings under the lending test in the categories of "Geographic Distribution of Lending" and "Distribution by Borrower Income" for each product-type that an institution offers, i.e., HMDA-reportable loans, small business, small farm and/or consumer loans. In concert with this change, regulators should have the explicit option of issuing a finding of "Not Rated" where the lending volume is too small to make a reasonable evaluation of the percent of lending to a targeted group. Regulators should not be required to issue a meaningless rating.
- Eliminate the current scoring rubric for large financial institutions, which allocates 50 percent of the rating for lending results, and 25 percent each for services and investments. The essence of a CRA performance evaluation should be driven by community need and reviewed in the context of the financial institution's business strategy and financial condition. The Department notes that only large financial institutions are subject to this formulaic approach, as the examinations for small, intermediate small and wholesale financial institutions permit regulators to balance the respective factors on a qualitative basis. Requiring all large financial institutions to adopt CRA approaches with the same weighting does not encourage a financial institution to meet the most pressing needs of its community. One community may have a tremendous need for retail branches, while finding its lending needs adequately served through remote options. A financial institution that truly addresses this need should be applauded, with regulators giving commensurate credit for such activity.
- For all institutions subject to the lending test, regulatory guidance should explicitly note that a financial institution whose performance in a particular category is below the aggregate's performance in that same category can still be considered "Outstanding" in that same category if the institution has built programs that are innovative and have had great impact, albeit with fewer or smaller loans.
- Where an institution is compared to the aggregate's record in the assessment area, regulators should consider comparing an institution's results against the lending results for its peer institutions. This would level the playing field for institutions that do not offer a specific product. For example, the lending results of an institution that does not offer small business credit cards cannot be fairly compared to one that does.

Incentives
The Department recommends that CRA performance be directly incorporated into the CAMELS rating system as an incentive for financial institutions to strive for a rating of "Outstanding." While we do not suggest that a seventh rating category be added to CAMELS representing CRA performance, we do strongly advocate that CRA ratings be explicitly included in the evaluation of the "Management" component of CAMELS. For example, an overall CRA rating of "Low Satisfactory" might impact the management rating by precluding a rating above "3" for this component of CAMELS. Tying CRA performance directly to CAMELS performance strengthens the incentive for strong CRA

performance. Moreover, this sends a clear message of the importance of management involvement in an institution's CRA activities.

An additional incentive for seeking a high CRA rating could be established by allowing any financial institution that receives an "Outstanding" to be eligible for an expedited review of its applications. Members of the public wishing to object to the institution's applications should be required to demonstrate that: 1) the issue underlying the objection was not reviewed during the CRA examination; and 2) the commenter was unable to raise the concerns during the CRA examination process.

Effect of evidence of discriminatory or other illegal credit practices on CRA Performance Evaluations:

The Department recommends that current CRA regulations be modified to require the review of violations under all consumer laws when examining a financial institution for CRA performance. A financial institution that has substantive violations of other consumer laws cannot be said to be meeting the needs of the community, which is what the federal CRA statute requires. To help reduce regulatory burden, CRA regulations should be revised to give regulators discretion to consider findings that an institution has committed substantive consumer law violations as a basis for downgrading the institution's CRA rating, whether the violations took place within or outside of the institution's assessment area.

In addition, the CRA regulations should explicitly require examiners to consider the terms and conditions of the lending products and services of a given institution, and the default/foreclosure and loan modification record when conducting a CRA exam. Where an institution's lending activities were bolstered by products that were predatory or otherwise deemed harmful to the community, the institution should be denied CRA credit for those activities. Indeed, loans found to be abusive should negatively impact a financial institution's rating on the lending test. CRA can be used as an effective tool to combat the proliferation of harmful anti-consumer practices and products. Allowing the full panoply of consumer laws to be considered and requiring a review of an institution's product terms and conditions will help ensure that CRA examinations match Congressional intent.

CRA Disclosures and Performance Evaluations:

As stated earlier regarding the use of technology to improve service to consumers, the Department recommends requiring financial institutions to make their CRA Performance Evaluations easily accessible on their websites. Today, the requirement that CRA Performance Evaluations be available at branches and home offices does not reflect the way many members of the public interact with financial institutions. While CRA Performance Evaluations are available on each federal agency's website, and can be requested from the institution and received by mail, this does not increase the visibility of CRA for the general public. A requirement that the CRA rating be posted on the institution's website, together with a link to the Performance Evaluation would produce minimal burden for financial institutions, while increasing public awareness of CRA. A requirement to disclose CRA ratings more prominently might also create an added incentive for a financial institution to strive for a higher rating.

The Department also recommends adding functionality to the websites of the federal agencies to permit interested parties to submit comments on a financial institution's CRA performance. Currently, the agencies' web pages devoted to CRA explain the statute and regulation and link to performance evaluations and examination schedules. Providing an easy method by which interested parties can comment on a financial institution's performance encourages community participation and may increase the information obtained from community contacts or public comments.

Other Comments:

Finally, the Department recommends that the agencies establish a system whereby a review of the CRA regulations, such as the one currently underway, is conducted as a matter of routine on a set timetable. This would improve the ability of the regulations to keep pace with the changes in the financial industry and to address problems more quickly. In addition, a more frequent review would permit more experimentation. Many of the changes proposed by all commentators may have unforeseen consequences, both positive and negative. A routine timetable for the review of CRA regulations would establish a method for revising any regulations that are not optimal.

Again, thank you for giving us this opportunity to comment on the proposed rule. If we may be of further assistance, please do not hesitate to contact me directly at (212) 709-3501 or Dianne Dixon, Deputy Superintendent of Banks, Consumer Services Division at (212) 709-3591 or Dianne.Dixon@banking.state.ny.us, or Wendy Takahisa, Director, CRA Unit at (212) 709-3831 or Wendy.Takahisa@banking.state.ny.us.

Regards,

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