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**Office of the Comptroller of the Currency:** Docket ID OCC-2014-0021
**Via email:** regs.comments@occ.treas.gov

**Federal Reserve Board:** Docket OP-1497
**Via email:** regs.comments@federalreserve.gov

**Federal Deposit Insurance Corporation:** Attention: Robert E. Feldman, Executive Secretary, CRA comments
**Via email:** comments@fdic.gov

**RE**: Proposed Changes to the Interagency Q&A Regarding Community Reinvestment

To Whom It May Concern:

Empire Justice Center is writing in response to the request for comments on the proposed changes to the "Interagency Questions and Answers Regarding Community Reinvestment" (Q&As). Empire Justice appreciates the agencies' work to update the Q&As in light of the tremendous changes in financial services, the new technologies available, and the new economic opportunities and challenges seen in our communities.

Empire Justice Center supports the proposed Q&As regarding alternatives to payday loans, green technologies, and small business financing and job creation. We also support the proposed Q&A highlighting the importance of community group input on judging the responsiveness of banks to community needs. However, we urge the agencies to reconsider the proposed changes regarding services through bank branches and alternative service delivery methods.

Empire Justice Center is a statewide not for profit organization that provides free legal representation to low income New Yorkers, undertakes policy analysis and advocacy, provides training and support as well as systems change litigation in a wide array of poverty law areas, including consumer, public benefits and civil rights. We are active members of the National Community Reinvestment Coalition (NCRC) and New Yorkers for Responsible Lending (NYRL).

Empire Justice, and the Greater Rochester Community Reinvestment Coalition (GRCRC) it convened, has had over 15 years of experience in monitoring banks' adherence to their obligations under the CRA and commenting on CRA exams. We understand the importance of data-driven community participation and advocacy in improving banks' responsiveness to community needs.

Following are Empire Justice Center's comments on select Q&A proposals:

**Service Test: Access to Banking Services and the Outdated Definition of Assessment Area**

## Update and Expand Assessment Area Definition

Profound changes in banking have made the current definition of assessment areas as geographical areas containing branches to be either incomplete or obsolete for a large number of banking institutions. While the agencies maintain this limited definition of assessment areas, banks clamor to deliver more of their community development loans and investments outside of their assessment areas. This is an indirect admission by banks themselves that assessment area definitions are outdated, and why we have been advocating for years for the mandatory expansion of assessment areas. For example, for the past several years, Wells Fargo, and its affiliates, has been one of the largest mortgage lenders in the Rochester NY MSA. However, as it has no depository in the area, Wells Fargo has no obligation to serve the entire Rochester community, particularly low and moderate income (LMI) individuals and communities.

We urge the agencies to update the definition of assessment area such that banks are mandated to include, in addition to branches, geographical areas wherever an institution, including its affiliates, has a large presence (i.e. large number of mortgage, consumer and/or small business loans, significant share of the depository market), and is thus subject to all three CRA tests.

At the very least, if a bank wants favorable consideration outside of their assessment area for community development financing, they also should be subjected to the lending and services tests outside of their assessment areas, particularly in areas where they issue considerable numbers of loans.

Finally, the agencies continue to neglect to effectively deal with the optional treatment of affiliates on CRA exams when they know full well that banks will game the system and exclude affiliates that either engage in predatory activity or do not serve low- and moderate-income populations.

## Alternative Delivery Systems Should Not Replace Branches

Empire Justice agrees with the agencies that alternative delivery systems, such as online and mobile services, are a growing phenomenon that must be discussed in greater detail in CRA guidance. But these systems are not, and should not be, a replacement for full service branches.

In the Rochester NY area, banks are increasing their branch presence in middle and upper income geographies, while closing full service branches in LMI areas. This suggests that financial institutions still see brick and mortar branches as an important part of their business, along with online and mobile banking technology.

Before moving away from placing primary emphasis on full service branches, it must be shown that these alternative systems are available, accessible, and utilized by low- and moderate-income individuals and geographies.

Until further research on the use of alternative delivery systems is completed and the definition of assessment area is updated and expanded, the language that states "performance standards

place primary emphasis on full service branches" must NOT be deleted, as the agencies propose. Access to bank branches must continue to be given primary emphasis in determining a bank's CRA service test rating.

Additionally, as long as assessment areas are regional, examiners must restrict their assessments to a financial institution's performance and services in those areas. Therefore, the agencies must clarify that financial institutions will NOT receive CRA credit for the LMI individuals and geographies outside the financial institutions' established assessment areas that are reached through mobile or online technology.

To warrant CRA credit for alternative technologies within assessment areas, it must be clear that:

- those services are accessible to LM individuals and geographies;
- there is actual adoption of those technologies by LMI individuals and geographies;
- those technologies are the preferred method of engagement; and
- those services are not the sole method for LMI individuals and geographies to engage financial institutions.

**Lending Test: Innovative or Flexible Lending Practices**

Empire Justice supports the agencies' proposal to add two examples to the list of innovative or flexible lending practices.

The addition of small dollar loan products as an example of an innovative or flexible lending practice should encourage banks to offer such products. They are promising alternatives to higher-cost, often predatory, loans offered by institutions like payday lenders. When coupled with financial literacy and savings, small dollar loans offer real opportunities to help build sustainable wealth and financial knowledge. It must be made clear, however, that these small dollar loan programs will only be awarded credit if they are safe and sound alternatives to high-cost and predatory products.

We also agree with the addition of using alternative credit histories as a practice that warrants CRA credit. Many existing underwriting practices effectively exclude a large number of creditworthy LMI borrowers, so adding this will give financial institutions a greater incentive to integrate alternative credit histories into their business. We urge the agencies to clarify that a bank will NOT receive CRA credit if examiners find the bank is using a vendor that collects these types of payments in a manner prone to error or if the bank itself is making data collection errors.

**Community Development: Inclusion of CDFIs**

Empire Justice is happy to see the inclusion of Community Development Financial Institutions (CDFIs) in the list of entities for which the agencies will presume that any loan to or investment in promotes economic development. When banks invest in Rochester's two CDFI's, Genesee Co-op FCU and PathStones, we see those investments go right into the community, improving LMI communities and individuals.

**Conclusion**

We urge the banking regulatory agencies to consider this feedback and to strengthen the revisions to the Interagency Questions and Answers to ensure that LMI communities continue to receive adequate and accessible banking services.

Thank you for the opportunity to comment on this important matter.

Sincerely,

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