From: "Glynis Rigsby" <glynis@underdogventures.com> on 05/10/2005 02:02:51 PM

Subject: Truth in Lending

Office of the Comptroller of the Currency
250 E St. SW, Mail Stop 1-5
Washington 20219
RE: Docket Number 05-04

May 9, 2005

To Whom It May Concern:

Underdog Ventures is a community development venture capital fund which designs and manages venture funds with community development, philanthropic and venture components. We are well aware of the positive role played by CRA regulations in encouraging banks to participate in community development venture capital investment.

The CDVC industry manages $870 million of capital, more than 40 percent of which comes from investments made by banks and thrifts that are motivated, in part, by the Community Reinvestment Act, and specifically by the investment test. The CDVC industry provides much-needed equity capital to underserved communities, and has created over 24,000 new jobs in distressed areas of the country. According to Alan Greenspan, Chairman of the Federal Reserve Board, venture capital investments "are an essential part of the financial foundation for the dynamic young enterprises that are so central to our wealth-creating process. Continued efforts to develop the markets for private equity investment will be rewarded by an innovative and productive business community…especially in lower-income communities."

While the most recent proposal is an improvement over previous ones, Underdog Ventures, LLC would like to take this opportunity to address several issues, including the new OTS regulations, the significant weakening of the investment test, potential changes to the community development test, and the definition of "underserved rural areas."

The OTS regulations will have a disastrous effect on low-income communities. Underdog Ventures, LLC appreciates and recognizes the thoughtfulness of the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) in considering and reflecting many of the comments submitted by various banks and community groups. The most recent joint proposal is a significant improvement over previous ones, and would have a far more positive impact on low-income communities than the regulations already issued by the Office of Thrift Supervision (OTS). It is our sincere hope that the OCC, the FRB, and the FDIC will act in the best interest of those communities for which the CRA was originally designed to help, and will not follow the OTS' example of issuing regulations that will have a disastrous effect on low-income communities.

The significant weakening of the investment test will decrease the amount of much-needed investment in low-income communities. The investment test has helped to spur banks' interest in CDVC funds, and could create more interest in the future if it were to remain mandatory for all banks. Banks are the single largest provider of private capital to our industry, accounting for more than 40 percent of all private equity investments in community development venture capital funds. Because the proposed community development test no longer includes the investment test as a mandatory part of the CRA structure, Underdog Ventures, LLC is concerned that low-income communities will experience a dramatic reduction in these investments, and therefore continues to support a separate, required investment test in the CRA test structure for mid-sized banks. Underdog Ventures, LLC strongly advocates that the venture component of the current is not weakened.

The community development test should ensure that all three activities – community development lending, community development investment, and community development services – are continued. While we strongly advocate that the investment test remain in its current form, in the alternative, we propose that, at a minimum, banks be required to engage in all three components of the community development test in order to receive a "satisfactory" rating. A satisfactory rating would not be given if one or more activities in the community development test are not undertaken. Underdog Ventures, LLC supports the following modifications to the community development test in order to ensure that all three activities are continued:

· The compliance of "intermediate small banks" with the community development test should be evaluated based on a combination of measuring need (instead of need, opportunity, and capacity) and a baseline comparison to prior levels of a financial institution's activity for each of the three areas in the community development test. Increases in each of the three activity areas are to be expected according to a financial institution's growth in asset size from the previous examination period to the current examination period unless a demonstrated decline in need in a financial institution's service area can be shown. For financial institutions with unsatisfactory performances on any of the required service, lending or investment tests prior to the new community development test, the increase from baseline activities should be held to a level greater than growth in asset size, sufficient to demonstrate the need of the service area has been met.

· If a bank claims that it is unable to meet standards under the investment,
services or lending tests, it should be required to justify this. For example, if it does not meet minimum requirements under the investment test, it should be required to indicate which investment opportunities it considered and why it was unable to invest in them. The information provided by this requirement detailing the infeasibility of certain opportunities to meet the community development test will increase a database of knowledge vital to understanding the limitations and barriers to expanding financial services and access to capital to all communities—a key to the success of future community development activities.

Underdog Ventures, LLC supports the inclusion of "underserved rural areas" as a qualifying area for community development activities under CRA, and believes that the CDFI Fund's definition of rural areas should be adopted. The CDFI Fund defines qualifying rural areas under 12 CFR §1805.201(b)(3)(ii)(D) to include:

(1) The percentage of the population living in poverty is at least 20 percent;
(2) In the case of an Investment Area located:
(i) Within a Metropolitan Area, the median family income shall be at or
below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or
below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
(3) The unemployment rate is at least 1.5 times the national average;
(4) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or
(5) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

In the case of the CDFI Fund, the expanded rural definition has driven more Federal funding into a greater number of high-need rural areas. The expansion of CRA to these same areas will increase the likelihood that mainstream financial institutions will provide the necessary community development lending, investment, and services to improve the quality of life in the most underserved rural communities. We believe the CDFI Fund definition of rural areas is a clear definition that bank regulators can apply easily.

The regulations should be modified to provide CRA credit to investments and loans that benefit "targeted populations". Both the CDFI Fund and the New Markets Tax Credit include similar provisions that allow applicants to target certain populations, in addition to certain geographies. The CDFI Fund applies the following definition to "targeted population" under 12 CFR §1805.201(b)(3)(iii)(A): "Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the Applicant 's service area." In addition, the New Markets Tax Credit (NMTC) legislation authorizes the Treasury Secretary to designate "targeted populations" as low-income communities for the purposes of the NMTC. "Targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)), which states that "the term 'targeted population' means individuals, or an identifiable group of individuals, including an Indian tribe, who--
(A) are low-income persons; or
(B) otherwise lack adequate access to loans or equity investments."

Community development lending data should continue to be collected. Community development lending data is necessary to drive and support the continued growth and expansion of the community development field. Furthermore, reporting community development lending by "intermediate small banks" is not a significant added regulatory burden.

Thank you very much for the opportunity to comment on your proposed changes to the CRA regulations. If you have any questions about these comments, please do not hesitate to contact us.

Sincerely,

David Berge
President, Underdog Ventures, LLC