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November 10, 2014

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Robert E. Feldman,
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Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429

Re: Proposed Revisions to Existing CRA Q&As, 12 CFR _.24 (d)

Woodstock Institute appreciates the opportunity to comment on the proposed revisions in the hope that the final revisions will strengthen the services test and be used as part of a broader financial inclusion strategy and efforts to modernize the Community Reinvestment Act. Woodstock Institute urges the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (the Agencies) to strengthen their proposed revisions to the Community Reinvestment Act (CRA) Questions and Answers (Q&As) regarding retail banking and community development in order to ensure that financial institutions adequately meet the needs of low- and moderate-income (LMI) people. Our response focuses on the questions that pertain to retail financial services. In particular, we urge the Agencies to:

- Focus on the retail financial services needs of LMI consumers and incorporate the principles below about the retail financial services needs of LMI consumers into the retail CRA Q&As;
- Assess the extent to which retail products and services offered by financial institutions are actually adopted by a broad range of LMI consumers;
- Recognize the importance of full-service branches in meeting LMI community needs;
- Require banks to offer safe and affordable small dollar loan products or secured credit cards to meet LMI consumers' need for emergency credit;
- Grant negative CRA credit to banks that engage in behaviors that undermine LMI people's access to a safe, fair, and affordable financial system;
- Allow CRA credit only for products and services adopted by LMI people in the bank's assessment area;

- Admit that revisions to the CRA Q&As are not sufficient to address the major changes in the financial services industry and work to make the necessary changes in the law and regulations (as recommended in the 2010 public hearings), including redefining assessment areas based on areas in which banks conduct significant business, regardless of branch and ATM locations.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

Woodstock staff testified at the public hearing held in Chicago in August 2010 on needed revisions to CRA and submitted comments on the agencies previous proposed changes to the Interagency Q&As in May of 2013.

Introduction

Woodstock Institute strongly believes that CRA examinations should focus on assessing whether financial institutions are actually meeting the retail financial services needs of LMI people in the United States. The mere offering of products and services which financial institutions presume meet the needs of LMI people is an insufficient standard for fulfilling the purpose of CRA. Based on existing research and our experience advocating with and on behalf of LMI people for over 40 years, we believe the following facts and principles summarize the current retail financial services needs of LMI consumers and should guide answers and solutions to the retail CRA Q&As.

1. **LMI people need an affordable, basic transaction account or product** to deposit and access cash, deposit and cash checks, check balances, pay bills, receive direct deposit of wages or government benefits, and (for some) make remittances or money transfers, and obtain money orders to make payments where checks are not accepted (e.g., many landlords do not accept checks). Basic transaction products should have easily understood and disclosed terms and should not include tricks or traps of unpredictable, unfair, and high-cost fees that gouge consumers and lead to distrust of the banking system and use of high-cost Alternative Financial Services (AFS). A non-exclusive list of examples of acceptable basic transaction accounts are the FDIC's SafeT accounts, accounts that meet the California Reinvestment Coalition (CRC)'s SafeMoney standards,[1] and Citi's Access account.

2. **Many LMI people need convenient access to financial services through live interaction at branches** with people who speak their language; are culturally competent; can answer questions and provide guidance or counseling; and can address particular needs such as customers who are immigrants, lack Social Security Numbers, lack English literacy, are elderly, have vision, hearing or other impairments; or are not computer, mobile, or smart phone users. An overemphasis on alternative delivery systems in the revised retail CRA Q&As could reduce availability of critical

[1] "SafeMoney Standards Provide Clear Comparison of Bank Accounts in California." California Reinvestment Coalition. June 20, 2013.

one-on-one financial services to substantial segments of this population. See, for example, the Pew Research Center study[2] and the *Banking in Color* report.[3]

3. **LMI people need safe and affordable savings accounts.** Nearly half (44%) of households in the United States are "liquid asset poor," meaning they have less than three months' worth of savings—conservatively measured as $5,887 for a family of four, or three times monthly income at the poverty level. LMI individuals and people of color are disproportionately asset poor.[4] This lack of savings and liquid assets is a major factor in LMI consumers' use of high-cost AFS such as payday loans. Over a decade of research from demonstration programs and behavioral economics has shown that low-income people can and will save given the opportunity.[5] Our spending-oriented consumer culture, however, creates an environment in which it is much easier for people to spend than it is to save money without considering the short- and long-term opportunity costs of their spending. The trend towards increasing use of mobile payments is likely to exacerbate the human tendency to spend beyond our means unless public policy and private financial products and services meaningfully counter the ease of spending with specific goals and tools to help people save more, especially LMI people.[6] One way to encourage LMI people to accumulate small savings is to provide free coin counting machines in branches.

4. **LMI people need fair access** to safe and affordable checking and savings accounts and transaction products **without unreasonable barriers** posed by inaccurate, opaque, and inaccessible credit reporting agencies such as ChexSystems.[7] In cases where consumers had a legitimately reported unpaid account in the past, they need an opportunity to correct the past error and get a second chance to obtain a basic transaction account or product. A product that eliminates the possibility of overdraft, such as the Citi Access account or the Chase Liquid prepaid card, is especially important as an initial, second-chance account for those customers. In cases where a consumer had a legitimately reported instance of fraud with a checking account (e.g., intentionally wrote a bad check), the customer still should be able to open a savings account, or obtain a bank-issued prepaid card with no credit features.

5. **LMI people need affordable retirement savings accounts** (e.g., those that charge less than 1 percent in management fees). Over half of all private sector workers in the US lack access to an employer-based retirement savings plan, and very few of them independently purchase Individual Retirement Accounts (IRAs) or other retirement savings products. In Illinois, for example, 2.5 millions private sectors workers lack access to an employment-based retirement savings plan and, of those, 64 percent earn $40,000 or less annually, which is LMI for the Chicago MSA.[8]

6. **LMI people who lack adequate emergency savings or liquid assets sometimes need small dollar loans, but they need access to small dollar loans based on ability to repay that do not**

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[2] Smith, Aaron. Technology Adoption by Lower Income Populations. Presentation at APHSA-ISM Annual Conference. October 8, 2013.
[3] "Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities." NCLR. 2014. http://www.nclr.org/images/uploads/publications/bankingincolor_web.pdf. Accessed November 7, 2014.
[4] "Assets & Opportunity Scorecard." CFED. www.assetsandopportunity.org/scorecard. Accessed November 6, 2014.
[5] "CFED Fact File: All Families Can Save for the Future." CFED. March 2014. Accessed November 6, 2014.
[6] Ariely, Dan. Presentation to Consumer Financial Protection Bureau Consumer Advisory Board. October 30, 2014.
[7] See remarks of CFPB Director Cordray on checking account screening policies at http://www.consumerfinance.gov/newsroom/director-richard-cordray-remarks-at-the-cfpb-forum-on-checking-account-access
[8] Cowan, Spencer. "Coming Up Short: The Scope of Retirement Insecurity Among Illinois Workers." Woodstock Institute. September 2012.

trap them in a cycle of debt and that can be reported to credit reporting bureaus to gradually improve or build a credit history and credit score.[9] A non-exclusive list of examples of affordable small dollar loans are those provided by some credit unions, affordable secured credit cards, Key Bank's Key Basic product, Mission Asset Fund's Lending Circles, FDIC's Small Dollar Loan Pilot,[10] and the standards announced in the OCC and FDIC deposit advance product guidance.[11]

7. **LMI people need quality financial counseling, education and/or coaching that is directly tied to opening and using safe and affordable financial products in order to achieve financial capability.** Financial education that creates knowledge or confidence without also creating documented improvements in financial behavior, credit scores, or use of safe and affordable financial products is not effective and should not be eligible for positive CRA credit.

8. **LMI people want to conduct their financial lives with responsible financial services providers who do not undermine a fair financial system** by erecting unreasonable access barriers to safe and affordable retail financial services, offering predatory financial products, financing third-party predatory lenders, or engaging in discriminatory practices.

Based on an understanding of these LMI consumers' needs, we believe that:

Banks should be evaluated under the CRA retail service test based on the extent to which they actually meet specific quantity and quality goals established for each institution and assessment area based on their market share, LMI need factors, and other relevant factors unique to the particular performance context in their assessment areas. Banks should not be evaluated solely against their peers, which could generate a race to the bottom. Only banks that meet minimum retail quantity and quality goals and do not engage in behavior that undermines a safe and affordable financial system should be eligible for a Satisfactory rating. Only banks that exceed minimum retail quantity and quality goals and do not engage in "undermining" practices should be eligible for an Outstanding rating.

Banks should be required to offer secured credit or small dollar loan products. LMI people should be able to safely and affordably meet their needs for emergency credit through the mainstream financial system. Banks that do not offer a safe and affordable secured credit or small dollar loan product should not be eligible for an Outstanding CRA rating.

If banks meet or exceed the minimum retail financial services quantity and quality goals established for their assessment areas, including safe and affordable secured credit cards, small dollar loans, or lending circles, and also offer additional innovative or specialty retail products and services that are used to meet LMI needs, the banks should receive extra CRA credit which may make the bank eligible for an Outstanding CRA rating, but such extra credit should not be used to substitute for meeting the goals necessary to obtain a Satisfactory rating. Examples of products and services used by a significant number of LMI consumers for which a bank may receive CRA credit include: Individual Development Account (IDA) programs; children's savings account (CSA) programs; school-based banks; and LMI use of auto-save features to increase savings.

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[9] McKernan, Signe-Mary, Caroline Ratcliffe, and Caleb Quakenbush. "Small-Dollar Credit: Consumer Needs and Industry Challenges." Urban Institute. October 28, 2014

[10] "A Template for Success: The FDIC's Small-Dollar Loan Pilot Program." Federal Deposit Insurance Corporation. June 2010.

[11] "Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products." Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation. November 20, 2013.

We address the Q&As more specifically below.

I. Access to Banking Services

A. Availability and Effectiveness of Retail Banking Services

The retail CRA Q&As should focus on the extent to which banks are *actually meeting* a broad range of LMI consumers' retail financial services needs, regardless of the system for delivering those services. The focus should NOT be on mere availability of, or access to, a product or system of delivery which is not actually used by diverse segments of the LMI population. Even when a product or service reaches a fraction of LMI people, banks must also offer other products, services, and delivery systems that meet the needs of a broader range of LMI people so that no one is left out of the financial mainstream. Under current CRA regulations, assessment areas focus on geographic areas with deposit-taking branches and/or ATMs. While CRA advocates have argued for years that assessment areas should include all areas in which a bank conducts significant business, the proposed revisions to the retail CRA Q&As do not change the assessment areas. Rather, the proposed revisions clearly state that "alternative delivery systems supplement the services provided by a financial institution's branch and deposit-taking ATM structure." The Agencies further state it is their goal to "encourage broader availability of alternative delivery systems … without diminishing the value full-service branches provide to communities."

1. Does the proposed revised guidance strike the appropriate balance between consideration of traditional delivery systems (e.g., branches) and alternative systems for serving low- and moderate-income geographies and individuals?

No. By proposing to allow credit for alternative delivery systems (ADS) without expanding assessment areas to include areas in which a bank does significant business, the proposal diminishes the value that full-service branches provide to LMI people and communities and to people who do not use ADS. It is not appropriate to delete the phrase that "performance standards place primary emphasis on full-service branches," unless the bank presents convincing empirical evidence that it delivers safe and affordable products to a broad range of LMI people without branches. Further, it is not appropriate to delete the statement that ADS are considered "only to the extent" that they are effective in providing needed services to LMI geographies and individuals. The existing latter phrase is necessary to make it clear that mere availability of retail services without effective use by LMI people is not sufficient.

The recent FDIC paper on mobile banking[12] shows that while LMI use of mobile phones is prevalent and use of smart phones is growing, LMI people are still less likely to use smart phones than the general population and mobile banking has some significant disadvantages compared to branches for many in the LMI population. For example, the FDIC noted that one-on-one interaction is still important for the underserved, particularly for coaching and guidance.

The 12 CFR _.24 (d) criteria should be revised as follows:

(1) Because fewer LMI people use ADS than more affluent people, banks should put greater emphasis on ensuring that the distribution of branches in LMI areas adequately meets the needs of LMI consumers.

[12] "Assessing the Economic Inclusion Potential of Mobile Financial Services." Federal Deposit Insurance Corporation. June 30, 2014.

(2) Banks should get negative CRA credit for closing branches in LMI areas, unless the bank documents the migration of the same number and type of displaced customers to ADS AND adequate progress towards banking the unbanked through either branches or ADS.
(3) Banks should get positive CRA credit only for *actually* serving LMI needs, NOT for merely making services available. The examiners should use rigorous data to determine LMI community needs and assess how well banks are meeting them, such as examining data on demographics of product or service usage and sustainability over time and comparison of cost and quality of products and services based on model products.
(4) Banks should receive positive CRA credit for the degree to which products and services tailored to meet the needs of LMI people are *actually* meeting those needs.

Whether the services test places "primary emphasis" on full-service branches should depend on the needs of the specific LMI population in the assessment area. For example, if a significant segment (which doesn't have to be over 50 percent) of LMI people in an assessment area do not use internet/online banking, mobile banking, or remote deposit capture; don't speak English; and/or are over age 65, then branches may be a primary need and should receive primary emphasis.

B. Alternative Systems for Delivering Retail Banking Services

2. Are the factors listed for consideration when examiners evaluate the availability and effectiveness of alternative delivery systems sufficiently flexible to be used by examiners as the financial services marketplace evolves? Are there other factors that should be included?

The list of factors proposed in the revised Q&As is potentially too broad. Factors that should be used to determine the quality and quantity of ADS include:

(ii) Cost to consumers (not just as compared with other delivery systems);

(v) Rate of adoption (The Agencies should add a sustainability factor, e.g., account opened and still in use six months later); and

(vi) Reliability of the system.

Factors that are relevant to adoption of ADS by LMI people, but which should not generate CRA credit independent of adoption by LMI people, include:

(i) Ease of access or "availability";
(iii) Range of services delivered; and
(iv) Ease of use.

The proposed guidance further states that banks "may" provide data and quantitative information demonstrating that its ADS is used by LMI individuals. This language should be changed to "MUST provide data" and that CRA credit is NOT available without supporting documentation. As Woodstock Institute showed in its 2009 report, *Benchmarking Branch Outcomes*,[13] banks regularly maintain and use data and quantitative information on demographics of their customers and usage of their products and services. Several major banks now have chief data officers who use the bank's data on customer usage of

[13] Smith, Geoff, Sarah Duda, and Malcolm Bush. "Benchmarking Branch Outcomes: Using Available Data to Analyze and Improve the Delivery of Retail Bank Services to Low-Wealth Communities." Woodstock Institute. May 2009.

products and services to cross-sell other products. For example, the Bank of North Carolina "uses a SAS program that draws on 300 data fields to create easy-to-read charts on topics ranging from loan performance to mobile usage."[14] Since banks already have this data infrastructure in place, it should not be a significant burden for them to report the data to the Agencies. As Woodstock urged in the Benchmarking report, the Agencies should not only mandate collection of such data, but should also make the data publicly available (without disclosing personally identifiable information, of course).

The proposed factors on ease of access, range of services, and ease of use relate only to "availability" without connection to actual use by LMI individuals and, if used independent of LMI usage data, would provide too much flexibility to examiners and banks.

Additional factors that should be included are: the extent to which the bank's ADS is actually meeting the needs of a broad range of LMI individuals, as evidenced, for example, by usage by LMI immigrants, non-English speaking, low-literacy, elderly, vision- or hearing-impaired, persons without home computers, persons who do not use mobile or smart phones, persons who make payments with money orders, and persons who save coins.

3. What types of information are financial institutions likely to routinely maintain that may be used to demonstrate that an institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals?

As noted above, Woodstock's 2009 report on *Benchmarking Branch Outcomes*[15] showed that banks routinely maintain information and data that can and should be used to demonstrate that a bank's products and services are actually used by LMI persons. For the Woodstock report, a major regional bank (National City, now a part of PNC Bank) provided the following data: transaction-level data from a three-month period in 2007; and household-level level data for the month of November in 2005, 2006, and 2007. Using that data, it was possible to analyze:

- Usage of transaction accounts, online and telephone banking, as well as use of Visa products for specific periods: average number of transactions per household for bank customers in a Census tract;
- Percent transactions at the target branch and other branches; percent of bank income from fees (outside of interest and loan fee income);
- First account opened and last product or account opened (showing tenure or sustainability); last product or account type opened;
- The number of banking products a households owns other than transaction accounts, such as credit cards;
- The total number of accounts at the household, including deposit accounts, checking accounts, savings accounts, safe deposit boxes, and insurance and brokerage accounts, and ATM and debit cards; and
- Income levels based on CRA categories, including LMI.

The National City data also allowed for analysis of customers' use of the branches based on customers' residence proximity to the branch, showing that LMI customers more heavily used their neighborhood branches, illustrating the importance of having branches in LMI areas.

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[14] Broughton, Kristin. "Training Bankers to Be Data Scientists." American Banker. October 30, 2014.
[15] Smith, Duda, and Bush *op. cit.*

While banks may not have readily available data or quantitative information for some of the items, such as ease of access or use (which could depend on factors beyond the bank's control), banks should have printed or online materials describing the cost to consumers, range of services offered, and records of the numbers of consumers who have adopted and sustained use over time (say, six months) any specific ADS.

4. What other sources of data and quantitative information could examiners use to evaluate the ease of access; cost to consumers, as compared to other delivery systems; range of services delivered; ease of use; rate of adoption and reliability of alternative delivery systems? Do financial institutions have such data readily available for examiners to review?

Independent online sources such as www.bankrate.com and www.magnifymoney.com provide cost comparisons of products across providers. Magnifymoney.com also allows a consumer to indicate zip code, amount of usual balance, likelihood of overdrafting, and status as a student or senior to help gage which product might be most suitable.

5. When considering cost to consumers, as compared with other delivery systems, and the range of services delivered, should examiners evaluate these features relative to other delivery systems (i) offered by the institution, (ii) offered by institutions within the institution's assessment area(s), or (iii) offered by the banking industry generally?

When considering costs, examiners should consider the costs in the FDIC, CRC, and Citi Access models as well as a comparison of cost relative to other banks in the assessment area and the industry generally. If the cost is considered only relative to other delivery systems, by the bank or other banks, it could lead to cost inflation and lack of affordability for LMI people. Analysis of the cost should also determine whether it is easy for LMI customers to waive those costs. For example, it is relatively easy for a Citi Access account customer to waive the monthly fee of $10 by using one direct deposit per month, paying one bill online per month, or by maintaining a balance of at least $1,500. Or, it is relatively easy for a Chase Total Checking account customer to waive the $12 monthly fee by having an *aggregate* of $500 per month directly deposited (but not if each deposit must total least $500, which is higher than many amounts of Social Security payments). Basic checking and savings accounts that charge high fees which are not easily waived by LMI consumers should not pass the quality part of the CRA retail services test.

6. Do the proposed revisions adequately address changes in the way financial institutions deliver products in the context of assessment area(s) based on the location of a financial institution's branches and deposit-taking ATMs?

No. The proposed revisions do not adequately address changes in the way banks deliver retail financial services because they do not change assessment areas consistent with where banks conduct significant business outside of branches. If the proposed Q&As were adopted without the changes suggested here, banks would be encouraged to close branches and shift resources to ADS without having to demonstrate that ADS is actually meeting the financial needs of LMI people. Limiting assessment areas to where banks have branches or deposit-taking ATMs may incentivize banks to remove branches and ATMS from LMI areas in order to avoid having those areas used in their CRA evaluations.

Woodstock Institute supports the recommendations submitted by California Reinvestment Coalition, National Community Reinvestment Coalition, Association for Neighborhood and Housing Development, and Manna, Inc.

Respectfully submitted,

Dory Rand, President
Woodstock Institute

Heartland Alliance for Human Needs & Human Rights

Housing Action Illinois

Illinois Asset Building Group

Partners in Community Building

Project IRENE

Women's Business Development Center