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Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
Mail Stop 9W–11
400 7th Street SW
Washington, DC 20219

Board of Governors of the Federal Reserve System
Robert deV. Frierson, Secretary
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Re: Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Docket ID OCC-2014-0021; Docket No. OP – 1497

Dear OCC, FRB and FDIC:

New Economy Project appreciates the opportunity to comment on the proposed Interagency Questions and Answers Regarding Community Reinvestment (Q&A). The proposed Q&A raises important issues in Community Reinvestment Act (CRA) compliance, and highlights the pressing need for the Federal Reserve Board to update CRA regulations.

Outstanding issues that must be addressed by new CRA regulations include updating the assessment area framework; evaluating banks' performance in communities of color; including all bank subsidiaries and affiliates in CRA evaluations; requiring local needs assessments and reports; and ensuring that banks that discriminate or engage in abusive, deceptive, or unfair practices do not receive Satisfactory or better CRA exam grades.

New Economy Project works with community groups to fight for economic justice, and to build a "new economy" based on principles of cooperation, democracy, equity, social and racial justice, and ecological sustainability. Founded in 1995, the organization has led efforts in New York City to challenge discriminatory economic practices that harm communities of color and perpetuate inequality and poverty. New Economy Project facilitates New Yorkers for Responsible Lending, a statewide coalition comprised of more than 160 non-profit organizations.

The CRA states that banks have a continuing and affirmative obligation to serve all communities equitably, including low and moderate income communities, within the bounds of safe and sound banking principles; the agencies should strengthen the proposed Q&A to address serious deficiencies in the current CRA examination practices that allow banks to shirk this obligation.

CRA Examiners Must Assign Banks Negative CRA credit when Banks Engage in Activities that Harm or Destabilize Communities

For years Community Reinvestment Act exams have failed to account for the true impact of banks' business practices on low and moderate income communities. The proposed Interagency Q&As fail to address major deficiencies in CRA exam standards that allow banks to be awarded Satisfactory and even Outstanding grades even when they engage in discriminatory, abusive, deceptive, and unfair practices that cause harm and destabilize communities. The agencies' CRA examinations have historically overlooked discriminatory lending practices such as redlining and reverse redlining, as well as illegal and abusive mortgage servicing practices, high cost consumer lending, overdraft abuses, and other harmful activities banks engage in both inside and outside of their assessment areas. Banks typically receive CRA exam grades that suggest that they are meeting community needs in their assessment areas, even when the true picture of the banks' activities shows that banks are actively harming their low and moderate income customers.

The agencies should adopt an examination policy that clearly states that banks that engage in illegal or discriminatory activities will automatically receive a CRA rating of Substantial Noncompliance. Banks that engage in predatory lending, or other abusive or deceptive practices that harm low or moderate income communities or communities of color should receive negative CRA credit, and should not be considered for Outstanding CRA ratings.

CRA Grade Inflation Case Examples: Wells Fargo & Bank of America

One of the country's largest banks, Wells Fargo, received its fifth consecutive Outstanding CRA rating in December 2009 despite revelations in June 2009 that Wells Fargo employees systematically steered black and Latino borrowers who qualified for prime loans into subprime loans and targeted borrowers of color for abusive mortgage products they referred to as "ghetto loans."[1] These blatantly discriminatory practices came to light well before Wells Fargo's most recent CRA exam grade was released, but neither these findings nor the bank's years of predatory mortgage lending that harmed communities of color across the country moved the OCC to revise the bank's CRA rating.

In addition to the widespread and well-known mortgage and foreclosure problems CRA examiners overlooked in Wells Fargo's recent exams, examiners did not take into account Wells Fargo's exorbitantly priced "direct deposit advance" loans, despite widespread evidence that this payday loan product trapped numerous low and moderate income account-holders in a cycle of debt. The OCC and FDIC subsequently issued guidance requiring banks offering these loans to

[1] http://www.nytimes.com/2009/06/07/us/07baltimore.html?pagewanted=all&_r=0

underwrite the loans and assess borrowers' ability to repay in response to the problems caused by banks' payday lending.

The OCC is now overdue in issuing Wells Fargo's 2012 CRA exam rating, and, as it finalizes that report, must take into account overwhelming evidence of abusive practices by Wells Fargo, including the numerous recent public and private enforcement actions against the bank. For example, in March 2012, Wells Fargo was one of five mortgage servicers subject to the $25 billion National Mortgage Settlement for alleged mortgage servicing and foreclosure abuses, and then just months later entered into a $175 million settlement with the U.S. Department of Justice regarding allegations of discriminatory mortgage lending. That settlement was followed by a $203 million class action settlement for charging excessive overdraft fees in May 2013. Then, in October 2013, the bank entered into a settlement for $869 million regarding allegations of selling toxic loans to Freddie Mac. This pattern clearly demonstrates that Wells Fargo has caused substantial harm to low and moderate income people and communities across the country and must be awarded a Substantial Noncompliance CRA exam rating.

Similarly, Bank of America has received three consecutive Outstanding CRA ratings, the most recent in 2009, despite the bank's predatory and discriminatory mortgage lending during that exam period. Bank of America has not been issued a CRA exam rating since 2009, and since then has entered into a long list of settlements that allege discriminatory mortgage lending, mortgage servicing and foreclosure abuses, charging excessive overdraft fees, selling toxic loans to Freddie Mac, and more. This list of enforcement actions, all centered on Bank of America's business practices that harmed low and moderate income people and people of color, demonstrate that the agencies must award the bank a Substantial Noncompliance CRA exam rating.

In general, banks have routinely received, and continue to receive, inflated CRA exam grades that do not accurately reflect their negative impact on the low and moderate income communities they claim to serve. The agencies must update CRA examination standards to assess banks' actual performance in low and moderate income communities and communities of color. The agencies should issue negative CRA credit when banks engage in practices that harm or otherwise fail to responsibly serve low and moderate income communities and communities of color and should issue Substantial Noncompliance CRA ratings when they find that banks have engaged in illegal or discriminatory activities.

Alternative Delivery Methods Are Not Substitutes for Branches

The proposed Interagency Q&A attempts to address the difficulties of evaluating modern retail banking services under an outdated definition of assessments areas; however, instead of tackling the real problem of CRA's assessment area definition, the agencies propose to further weaken CRA standards by reducing CRA evaluations' emphasis on full service branches. Banks, especially those that conduct all or a substantial portion of their business over the internet, already avoid CRA obligations by assigning online or mailed deposits to a limited number of branches. Other banks limit access to branches by charging fees to customers who prefer to bank in person rather than over the internet. These tactics should not be rewarded under CRA, and banks that limit access to branches in areas where they do business should receive negative CRA credit as a result.

Instead of reducing CRA's emphasis on full-service retail branches, the agencies should compare the level of service banks provide at branches and through alternative delivery methods in all geographies where the banks do business and assign CRA credit proportionate to the quality, accessibility and variety of services provided. The outcome of this change in methodology would, for the vast majority of banks, mean that branch banking services would receive more CRA credit than alternative delivery methods. This outcome is appropriate because low and moderate income communities and communities of color have less access to the internet than higher income, predominantly white communities, which means that banks' provision of branch services are an important indicator of whether or not banks are serving low and moderate income communities.

The Agencies Must Evaluate the Actual Impact of Innovative Lending Programs

Banks often tout their innovative and flexible lending programs and receive CRA credit for these programs. Unfortunately, many of the programs for which banks have earned CRA credit have ultimately proven harmful to banks' low and moderate income customers. Although some banks offer helpful first-time homebuyer loans and other flexible lending products, many banks encourage their low and moderate income customers to take out harmful loans under the guise of offering flexible and innovative products.

Wells Fargo's deposit-advance payday loan product with triple digit interest rates is one example of this pattern. Emigrant Bank's low and no documentation mortgage loan program is another. The FDIC praised Emigrant's flexible lending programs in its 2008 CRA exam, but the bank is now facing numerous lawsuits for allegedly making equity-stripping loans that were doomed to fail and carried unconscionable 18% default interest rates.

The agencies must make clear in the CRA guidelines that banks will be evaluated not only on the existence of flexible and innovate lending programs but on the impact those programs have on low and moderate income people and communities. The existing standard that banks will be evaluated on "use of innovative or flexible lending practices in a safe and sound manner" has not been enforced meaningfully, and the agencies must improve their examination procedures.

The agencies should assign negative CRA credit if a disproportionate number of people using banks' innovative and flexible loan programs default on mortgages or consumer loans, or otherwise experience financial hardship as a result of the programs. Similarly, banks should also receive negative CRA credit if they offer high-quality, flexible lending programs but steer borrowers of color into less advantageous products. If the agencies adopt the proposed small dollar lending amendment to the Q&A, CRA examiners must carefully assess whether banks' small dollar loan programs are in fact helping low and moderate income customers build credit and savings, and should crack down on banks if the programs are simply payday loans in disguise.

Community Development Activities Should Benefit the Residents of Low and Moderate Income Communities

Community development activities should only be eligible for CRA credit if they benefit low and moderate income residents of the targeted communities. In particular, the agencies should ensure that community development projects do not displace low and moderate income community members from housing or jobs when deciding whether to grant CRA credit for such activities.

In New York City, many housing developments that include an affordable housing component offer rents that are out of reach of low income New Yorkers. Compounding the problem, large developments can increase rents neighborhood-wide, displacing more people than the new development can house. The agencies should ensure that CRA examiners consider the broader impact of new housing development and assess whether new projects will add or subtract from neighborhoods' stock of affordable housing before assigning CRA credit for investments in housing development.

Similarly, job creation activity should be assessed for its true impact on neighborhood residents. CRA credit should be given for projects that hire local residents for jobs that pay a living wage and offer opportunities for advancement. Projects that create only dead-end or temporary low-wage jobs should not receive CRA credit for job creation or preservation.

We support the agencies' proposal to clarify that banks' financing of renewable energy or green retrofitting projects for affordable housing and community facilities are eligible for CRA credit if the project reduces the cost of housing for residents or otherwise benefits low and moderate income community members.

Conclusion

The proposed Interagency Q&A raises critical CRA issues, and underscores the need for the Federal Reserve Board to update the CRA regulations. In the meantime, the agencies must amend the proposed Q&A to ensure that CRA evaluations hold banks accountable for the effect their services and investments have on low and moderate income communities and communities of color. In particular, the agencies should assign banks negative CRA credit when they engage in predatory or discriminatory lending, restrict access to branch banking, market products that ultimately leave their low and moderate income customers worse-off than they were before they used the products, or invest in projects that displace low and moderate income residents from their communities. The agencies must ensure that CRA examiners assess the actual impact of banks' CRA-eligible activities and the quality and accessibility of banks' retail services.

Thank you for the opportunity to comment.

Sincerely,

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