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October 17, 2001

Advance Notice of Proposed Rulemaking
Community Reinvestment Act

Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Attenton: Docket No. 01-16

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket no. R-112

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2001-49

Dear Sirs,

FLORIDA LEGAL SERVICES provides free legal assistance to low income individuals and community groups in Florida. We welcome the opportunity you have provided us through the current Advance Notice of Proposed Rulemaking ("ANPR") to comment on current regulations under the Community Reinvestment Act ("CRA"), and to suggest any proposed modifications. Since 1985, we have represented clients under the Community Reinvestment Act. We have worked extensively with large Florida banks and regulators to improve banks' community reinvestment in our clients' communities.

We have seen that CRA has been the primary and often only means which our clients have had to obtain bank credit and related services. On the subject of mortgage lending, which has justifiably been the focus of much CRA activity, it is due to CRA that in the past fifteen years many large and small financial institutions have begun to make mortgage loans to residents of low-income minority Florida neighborhoods. Only in the past few years has there has been noticeable improvement in mortgage lending to minority borrowers, and even here the record show that much still needs to be done. This improvement has come only through the very hard work and partnership of elected officials, federal regulators, committed financial institutions, community advocates, and minority borrowers over recent years.

Because of our experience, FLORIDA LEGAL SERVICES considers the CRA to be a considerable success, and would strongly oppose efforts to dilute or otherwise hamper its effectiveness. We support the more extensive comments to the ANPR being submitted by low-income community advocacy groups such as the National Community Reinvestment Coalition and the Woodstock Institute. The one overall point we would like to focus on is the great need to maintain the numeric measures of CRA activity currently used to evaluate the lending and credit-related investment activities of financial institutions, including small financial institutions. For our clients, it is essential that the identification and quantification of such activities specifically for low- and very-low income individuals and communities also be retained. The reason these standards are so critical is that financial institutions operate and evaluate themselves through mostly numeric measures. We have seen that before numeric standards were emphasized in 1990, financial institutions largely gave CRA performance secondary status as an operational objective. You can trace the beginnings of every substantial CRA-related effort in Florida, whether it be for individual mortgage lending or financing for affordable housing or small businesses, to the implementation of numeric measures to evaluate CRA performance in the early 1990s. They need to remain in place for the CRA to continue to be effective. "Creative" efforts by financial institutions, including investments, that may reasonably lead to significant numerical or other improvements in meeting the credit needs of communities are, and should continue to be rewarded under CRA. Those efforts that do not reasonably hold this promise may be otherwise valuable activities of financial institutions, but they are not appropriate for CRA credit.

FLORIDA LEGAL SERVICES believes that principal reason for modification of CRA is to keep the act functioning appropriately, by providing a currently accurate standard by which to assess financial institutions' responsiveness to the credit needs of their communities in providing its credit products. The four updates we specifically recommend below are in response to these changing conditions. For the most part, we encourage the regulatory agencies simply to incorporate into CRA rules certain standards for evaluating CRA activities that you have developed and already communicated to financial institutions in the past several years.

1. We recommend that mortgage lending continue to be evaluated as it is now, but that the standards be updated to include measures relating to predatory lending, including the proposed expansions of HMDA information. The point of expanding this information is for it to be pertinent to CRA evaluations. Predatory mortgage lending may be defined generally as lending

practices that make the loan unreasonably difficult for the borrower to pay back, including but not limited to practices that the agencies have listed on numerous occasions. It includes mortgage lending, and also certain short-term loans such as title loans and payday loans that often are made on very harsh terms. The basic nature of predatory lending is that it does not consist of arms-length transactions. It is permeated by targeting of customers who are likely to be vulnerable; aggressive and misleading sales practices; and unequal bargaining power and access to information both at the consummation of the transactions and throughout their execution. Predatory lending's relation to CRA is that when it is practiced, the financial institution is offering credit products that instead of meeting the credit needs of communities, substantially harm significant parts of communities. Communities need credit products they can pay back. Financial institutions would be evaluated under a predatory lending in a manner similar to how they are evaluated for discriminatory lending practices. We would be happy to participate in more extensive development of a predatory mortgage standard.

2. In addition, we recommend that the sentence in provision (a)(1) of the lending test that permits financial institutions to choose whether to be evaluated under CRA for unspecified kinds of non-mortgage consumer lending be deleted. In the past few years, financial institutions' offering of personal consumer credit has expanded in a number of significant ways, such as the offering of payday loans, and has raised a number of significant regulatory issues that have so far been addressed through advisory letters and similar mechanisms. Such credit by law is subject to CRA. Financial institutions no longer should be permitted to opt out of CRA review of these forms of consumer lending.

3. We recognize the distinction made in the law between deposit-based lending and non-deposit based lending. The former is the focus of community "reinvestment;" the latter is principally a business enterprise. We recommend that CRA regulations relating to limited purpose, wholesale, and affiliate institutions be updated to assure that financial institutions are evaluated under CRA based upon substance rather than form, especially in light of the rapid expansion of financial institutions' activities in the past few years. Lending that is financed and, in effect, originated by depository institutions through separate corporate entities should be evaluated under CRA, regardless of the corporate form used to make these loans. Conversely, transactions made on paper by financial institutions that in practice are made on terms determined by contract with separate entities, to which all or most the interest in the loans are immediately sold, are frauds upon financial institutions charters, and detrimental to the public's confidence in financial institutions. For example, we are concerned that the current contract between Goleta National Bank and ACE payday loans exhibits these characteristics, and was entered into specifically to circumvent through fraud state consumer protection loans that limit parties' capacities to modify loan terms. These frauds should not be allowed be regulatory agencies, and should not be considered for regulatory purposes to be made by financial institutions. We believe that this can be accomplished without interfering with legitimate interstate lending activity of regulated institutions with individuals outside the ordinary service area of the institution.

4. Finally, we recommend that CRA regulations be modified to take into account means of delivering credit services other than traditional bricks-and-mortar facilities. We believe this is essential to accurate assessment of financial institutions' service areas.

Thank you for the opportunity to comment on possible CRA rulemaking. We look forward to participating further in CRA rule development.

Respectfully submitted,

/s/

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