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May 14, 2013

Office of the Comptroller of the Currency

Docket ID OCC-2013-0003

Via email: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

Federal Reserve Board

Docket No. OP-1456

Via email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Federal Deposit Insurance Corporation

Attention: Comments on CRA Interagency Q&A

Via email: [comments@fdic.gov](mailto:comments@fdic.gov)

**Re: Proposed Changes to Interagency Q&A**

To Whom It May Concern:

Empire Justice Center is writing to respond to the proposed changes to the Interagency Question and Answer (Q&A) document. While Empire Justice believes these proposed changes would be modestly helpful, they fall far short of the comprehensive revisions to the CRA regulation needed to keep pace with the changes in the banking industry.

Empire Justice Center is a statewide, multi-issue, multi-strategy, public interest law firm focused on changing the “systems” within which poor and low-income families live. Empire Justice including its predecessor the Public Interest Law Office of Rochester (PILOR), has been working on community reinvestment, fair lending and consumer law issues for the past 21 years. We’ve issued over a dozen reports on mortgage and small business lending, homeowners’ insurance redlining and the foreclosure crisis. From 1992 through 2011, thanks to CDBG funding from the City of Rochester, we were able to convene the Greater Rochester Community Reinvestment Coalition (GRCRC) to meet with the Rochester NY area’s top banks and discuss how they might improve their investments in our traditionally underserved

communities. On behalf of GRCRC and in collaboration with its 30 members, we commented on dozens of bank CRA exams, mergers and branch closings.

We know that the Community Reinvestment Act (CRA) coupled with strong community-based CRA activism can make an effective tool for increasing lending and investments in low and moderate income communities. And, we know from experience how CRA needs to be strengthened to better serve communities in today's global and technology-based economies.

In the wake of the foreclosure crisis, the slowdown in lending and the changes in how banking today works, Empire Justice Center believes that the agencies must implement bold and aggressive changes to the CRA regulation in order to increase responsible lending, investing, and services in low and moderate income communities. The proposed changes to the Q&A do not do this.

The agencies propose to motivate increased community development lending and investing in smaller cities and rural areas by facilitating lending outside of banks' assessment areas (or geographical areas containing bank branches that are scrutinized by CRA exams). Currently, a bank receives favorable CRA consideration for lending and investing in statewide or regional areas that include the bank's assessment area(s) provided that the bank is adequately serving the needs of its assessment area(s). The agencies propose to change this to providing favorable CRA consideration for community development financing in the larger areas as long as the financing in the larger areas are not "in lieu of or to the detriment of" financing in the assessment area(s).

These proposed changes would modestly facilitate community development financing in smaller cities and rural communities, but these changes are much less effective than broader changes to banks' assessment areas would be. Currently, assessment areas are only those geographical areas containing bank branches although several banks, especially large banks, make considerable numbers of loans beyond their branch networks through loan officers, brokers, or correspondent lenders. The agencies should designate additional assessment areas for counties and metropolitan areas in which a bank makes sizable numbers of loans but in which the bank does not have branches. This is not difficult to do; the former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks. Expanding assessment areas would be more effective in stimulating increased community development financing and home and small business lending than the tortured semantic and legalistic changes proposed to the Q&As.

In addition, the agencies are missing an opportunity to assess the effectiveness of their proposed changes by not requiring additional data disclosure of community development lending and investing. For the past several years, the National Community Reinvestment Coalition (NCRC) and its members have been advocating for the agencies to publicly provide data on community development lending and investing on a census tract level or at least on a county level. If county level data was available for community development financing, the agencies and the public at large could assess how effective any proposed changes to the

regulation or Q&As would be in stimulating more community development financing in rural counties and smaller cities while ensuring that the current assessment areas do not experience significant declines in community development financing. The data would either reconfirm any recent changes or would prompt additional changes.

The agencies must also refrain from altering examination weights in their proposed Q&A on community development lending. While it is desirable to affirm the importance of community development lending as the first part of the proposed Q&A does, the second part of the Q&A stating that strong performance in community development lending can compensate for weak performance in retail lending must be deleted. Since retail lending is the predominant part of the lending test, it is unlikely that strong performance on community development lending can or should compensate for weak performance on retail lending.

Better methods can be developed for elevating the importance of community development lending. Either examination weights can be more fully developed on the lending test or community development lending and investing should be considered together on a community development test. A change to a Q&A cannot adequately deal with the complex issue of weighing community development lending and could inadvertently decrease the level of bank retail lending.

The proposed Q&As do not address the glaring deficiencies of the service test. While bank branches are closing, some large banks are now engaged in abusive payday lending. A more rigorous service test which assesses data on bank deposits in addition to bank branches in low- and moderate-income communities is urgently needed. In addition, the existing Q&As regarding foreclosure prevention and loan modifications are not effectively stimulating large-scale foreclosure prevention activities. Reforms to the CRA regulation boosting the importance of foreclosure prevention and servicing must be undertaken. Banks who are violating the mortgage servicing and/or have violated the National Mortgage Settlement should get significant downgrades on the service test part of their CRA exam. NY's Attorney General Schneiderman just sued two banks (Bank of America and Wells Fargo) for violating servicing guidelines under the National Mortgage Settlement.<sup>1</sup>

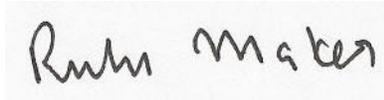
Still another issue that is not addressed by the proposed changes to the Q&As is loan purchases versus originations. NCRC and its members have commented recently on CRA exams in which banks are making few loans to low- and moderate-income borrowers but purchasing several loans made to these borrowers from other banks. Making loans represents a more concerted effort to serve community needs than purchasing high volumes of loans. Existing Q&As warn banks against purchasing loans to "artificially inflate CRA performance." But since this behavior continues, the Q&A needs to be strengthened by saying that CRA examiners will separately evaluate originations and purchases and will downgrade banks if the purchasing is conducted in a manner to inflate the CRA rating.

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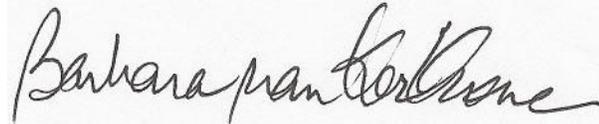
<sup>1</sup> See the announcement here: <http://www.ag.ny.gov/press-release/ag-schneiderman-sue-wells-fargo-bank-america-violating-national-mortgage-settlement-0>.

Three years after the summer 2010 hearings in which the agencies received hundreds of comments, including comments from GRCRC,<sup>2</sup> Empire Justice Center wants to see comprehensive reforms regarding assessment areas, the service test, foreclosure prevention, and the consideration of loan purchases on CRA exams. We urge prompt and comprehensive reform to the CRA regulations.

Sincerely,

A handwritten signature in black ink that reads "Ruhi Maker". The signature is written in a cursive style with a light grey background behind it.

Ruhi Maker, Esq.  
Senior Attorney

A handwritten signature in black ink that reads "Barbara van Kerkhove". The signature is written in a cursive style with a light grey background behind it.

Barbara van Kerkhove, Ph.D.  
Researcher/Policy Analyst

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<sup>2</sup> GRCRC's comment letter can be found at: <http://www.empirejustice.org/policy-advocacy/comments/grcrc-wants-stronger-cra-2.html>.