

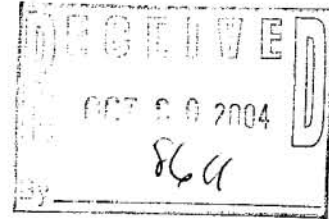


Greater Upstate Law Project, Inc.

119 Washington Avenue ♦ Albany, New York 12210 ♦ (518) 462-6831 ♦ Fax (518) 462-6687

October 18, 2004

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th St. NW 20429
Via email: comments@fdic.gov



RE: RIN 3064-AC50

Dear Mr. Feldman:

The Greater Upstate Law Project (GULP) urges you to withdraw the recently proposed changes to the Community Reinvestment Act (CRA) regulations.

The Greater Upstate Law Project, Inc. is a 501(c)(3) created in 1973 as a resource and support center for legal services programs throughout New York State (outside of New York City). On January 1, 2004, GULP merged with the Public Interest Law Office of Rochester, a not-for-profit law firm that provides free, civil legal services to low-income people, thus combining our talent and resources to provide a powerful statewide blend of policy advocacy, substantive law training, technical assistance, and impact litigation as well as targeted direct client services through our offices in Rochester, Albany and White Plains.

GULPILOR is a significant player in shaping and implementing policies that impact the delivery of critical services to poor and low income New Yorkers. Our legal expertise in an array of poverty law areas is well known and deeply respected. As an active support center for, and partner with, the local legal services community, we bring to our policy work the real life experiences of those working directly with individuals and families in need. Our work in the legislative, administrative and judicial arenas allows us to fully represent the needs of our clients. Clearly, we take a multi-issue, multi-dimensional approach to our work.

CRA has been instrumental in increasing homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities including those in the Albany, NY metropolitan areas. The changes proposed by the FDIC are contrary to the CRA statute and Congress' intent because they will slow down, if not halt, the progress made in community reinvestment.

The proposed changes will thwart the Administration's stated goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. Since FDIC Chairman Powell, a Administration appointee, is proposing the changes, the sincerity of the Administration's commitment to expanding homeownership and economic development is called into question. How can an administration hope to promote community revitalization and wealth building when it proposes to dramatically diminish banks' obligations to reinvest in their communities?

Specifically, we have four major areas of concern with the proposed regulatory changes:

- Dilution of the current testing criteria for demonstrating commitment to Community Reinvestment that will severely reduce community engagement by banks;

- Dramatic changes in the definition of "small" and "large" banks that would remove billions of dollars in assets from the mix of CRA requirements;
- Elimination of income targets in defining acceptable CRA activity in rural areas that will adversely impact some of our country's most economically distressed areas; and
- Elimination of requirements to report on small business lending activities.

Under the current CRA regulations, banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for state-chartered banks with assets between \$250 million and \$1 billion. In place of the investment and service parts of the CRA exam, the FDIC proposes to add a community development criterion. The community development criterion would reduce the current obligation of these banks to offer a full compliment of community development loans, investments and banking services.

The proposed changes would affect thousands of neighborhoods throughout the country. Banks targeted by this new, misguided FDIC proposal have 7,860 branches. All banks regulated by the FDIC with assets under \$1 billion have 18,811 branches. Your proposal leaves banks with thousands of branches "off the hook" for placing any branches in low- and moderate-income communities.

The community development criterion would be seriously deficient as a replacement for the investment and service tests. Mid-size banks with assets between \$250 million and \$1 billion would only have to engage in one of three activities: community development lending, investing or services. Currently, mid-size banks must engage in all three activities. Under your proposal, a mid-size bank would choose a community development activity that is easiest for the bank instead of providing an array of comprehensive community development activities needed by low- and moderate-income communities.

The proposed community development criterion will result in significantly fewer loans and investments in affordable rental housing, Low-Income Housing Tax Credits, community service facilities such as health clinics, and economic development projects. It will be too easy for a mid-size bank to demonstrate compliance with a community development criterion by spreading around a few grants or sponsoring a few homeownership fairs rather than engaging in a comprehensive effort to provide community development loans, investments, and services.

Your proposal would make 879 state-chartered banks with over \$392 billion in assets eligible for the streamlined and cursory exam. In total, 95.7 percent or more than 5,000 of the state-chartered banks your agency regulates have less than \$1 billion in assets. These 5,000 banks have combined assets of more than \$754 billion. The combined assets of these banks rival that of the largest banks in the United States, including Bank of America and JP Morgan Chase. Your proposal will drastically reduce, by hundreds of billions of dollars, the bank assets available for community development lending, investing, and services.

The elimination of the service test will also have harmful consequences for low- and moderate-income communities. CRA examiners will no longer expect mid-size banks to maintain and/or build bank branches in low- and moderate-income communities. Mid-size banks will no longer make sustained efforts to provide affordable banking services, and checking and savings accounts to consumers with modest incomes. Mid-size banks will also not respond to the needs for the growing demand for services needed by immigrants such as low cost remittances overseas.

One of the FDIC banks affected by the CRA regulation is the Pioneer Savings Bank, a bank operating in upstate NY, including the Albany-Schenectady-Troy, NY MSA. It received a Satisfactory rating in its last CRA exam.¹

¹ See performance evaluation at: http://www2.fdic.gov/crapes/2001/20741_011127.pdf

In 2003, the Pioneer Savings Bank made a total of 452 1-4 family unit mortgage loans in the Albany-Schenectady-Troy, NY MSA totaling \$40 million. The Pioneer Savings Bank's total lending marketshare was 1.0 percent in the MSA. In comparison, Pioneer Savings Bank's marketshare was

- 0.3 percent among African-American and Hispanic households, 0.7 percent less than its MSA marketshare;
- 0.9 percent among low-moderate income households, 0.1 percent less than its MSA marketshare;
- 0.6 percent among low-moderate income census tracts, 0.4 percent less than its MSA marketshare.

All Financial Institutions (AFIs) made 24 percent of their loans to low-moderate income households, while the Pioneer Savings Bank made 21 percent of its loans to low-moderate income households.

In 2003, the Pioneer Savings Bank made a total of 146 1-4 family unit (owner-occupied) home purchase loans in the Albany-Schenectady-Troy MSA totaling \$16 million. The Pioneer Savings Bank's home purchase marketshare was 1.0 percent in the MSA. In comparison, the Pioneer Savings Bank's marketshare was

- 0.7 percent among African-American and Hispanic households, 0.3 percent less than its MSA marketshare;
- 1.0 percent among low-moderate income households, the same as its MSA marketshare;
- 0.8 percent among low-moderate income census tracts, 0.2 percent less than its MSA marketshare.

AFIs made 31 percent of their loans to low-moderate income households, while Pioneer Savings Bank made 32 percent of its loans to low-moderate income households.

In 1999, The Pioneer Savings Bank established a commercial loan department to increase its small business lending. CRA Disclosure Report data provided by the bank showed small business originations in 2000 totaled 15 loans for \$1.3 million.

In its 2001 CRA performance evaluation, the Pioneer Savings Bank's overall performance was satisfactory, with a high satisfactory in service tests and a low satisfactory in the lending and investment tests. Community development lending, investments and grants were described as adequate. This satisfactory rating and description of its community development investments as adequate may have been the impetus for Pioneer to recently partner with a local affordable housing developer to provide mortgage financing for a new construction project for lower-income families. Would Pioneer have done this were it subject to the streamlined CRA exam rather than the full exam it is currently subject to? We think not. Thus, it would be a travesty to change the threshold and make the exam even easier, resulting in unmet community credit needs.

In order to further understand the potential impact of the FDIC's proposal on community development activities in New York State, an analysis of FDIC 2004 Statistics on Depository Institutions data was conducted for institutions active in 2004 in the state of New York. This analysis indicates that by changing the FDIC "small" bank threshold (See Table A):

- The number of "large" FDIC regulated institutions active in New York State would decline by 55 percent and the number of "small" institutions would increase by 76 percent
- These "small" banks would make up 74 percent of FDIC regulated institutions state-wide, substantially more than the current 42 percent
- These "small" banks would control over \$16.6 billion in assets, a 364 percent increase from what the current "small" banks control
- In urban areas, the number of "large" FDIC regulated institutions would decline by 51 percent so that over 72 percent of FDIC institutions would be "small" banks
- In rural areas, the number of "large" FDIC regulated institutions would decline by 75 percent to the point where over 86 percent would be "small" banks

As the above analysis shows, FDIC banks with between \$250 million and \$1 billion in assets have a strong presence in New York LMI and rural communities. These institutions have contributed

significant levels of community development lending and have originated a considerable number of small business loans. The FDIC's proposal to shift these banks to "small" status would threaten CRA activities and deliver a devastating blow to community development efforts statewide.

Another destructive element in your proposal is the elimination of the small business lending data-reporting requirement for mid-size banks. Mid-size banks with assets between \$250 million and \$1 billion will no longer be required to report small business lending by census tracts or revenue size of the small business borrowers. Without data on lending to small businesses, it is impossible for the public at large to hold the mid-size banks accountable for responding to the credit needs of minority-owned, women-owned, and other small businesses. Data disclosure has been responsible for increasing access to credit precisely because disclosure holds banks accountable. Your proposal will decrease access to credit for small businesses, which is directly contrary to CRA's goals.

Lastly, to make matters worse, you propose that community development activities in rural areas can benefit any group of individuals instead of only low- and moderate-income individuals. Since banks will be able to focus on affluent residents of rural areas, your proposal threatens to divert community development activities away from the low- and moderate-income communities and consumers that CRA targets. Your proposal for rural America merely exacerbates the harm of your proposed streamlined exam for mid-size banks. Your streamlined exam will result in much less community development activity. In rural America, that reduced amount of community development activity would earn CRA points if it benefits affluent consumers and communities. What's left over for low- and moderate-income rural residents are the crumbs of a shrinking CRA pie of community development activity.

In sum, the proposed changes to the CRA stand in stark opposition to CRA's statutory mandate of imposing a continuing and affirmative obligation to meet community needs. The proposal will dramatically reduce community development lending, investing, and services. You compound the damage of your proposal in rural areas, which are least able to afford reductions in credit and capital. The proposal would also eliminate critical data on small business lending. Two other regulatory agencies, the Federal Reserve Board and the Office of the Comptroller of the Currency, did not embark upon the path the FDIC is taking because they recognized the harm it would cause.

If the FDIC is serious about CRA's continuing and affirmative obligation to meet credit needs, it would be proposing additional community development and data reporting requirements for more banks instead of reducing existing obligations. A mandate of affirmative and continuing obligations implies expanding and enlarging community reinvestment, not significantly reducing the level of community reinvestment.

The Community Reinvestment Act is vital to the fabric of our country's low- and moderate-income communities. It has stood the test of time, reaping incredible, tangible benefits for those communities most in need. It has helped ensure that the banking industry recognize, honor and report on its community-based activities.

This cornerstone of community investment must not be gutted by regulatory fiat. Should the agency move forward with the proposed changes, we will do all we can to bring Congressional oversight and corrective action to bear.

We urge you to rescind the proposed changes.

Yours truly,



Anne Erickson
Executive Director

Table A: Impact on FDIC Institutions in New York State of Proposed Small Bank Definitions								
Institutions and Assets as of March 31, 2004								
FDIC Institutions Affected								
	Total FDIC Institutions	Current "Small" Banks (<\$250M)	Current "Large" Banks (\$250M +)	Target Banks (\$250M to \$1B)	New "Small" Banks (up to \$1B)	New "Large" Banks (\$1B +)	% Change in "Small" Banks	% Change in "Large" Banks
Total NYS	81	34	47	26	60	21	76%	-55%
Urban	67	28	39	20	48	19	71%	-51%
Rural	14	6	8	6	12	2	100%	-75%
% of Total FDIC Institutions								
Total NYS		42%	58%	32%	74%	26%		
Urban		42%	58%	30%	72%	28%		
Rural		43%	57%	43%	86%	14%		
Assets of FDIC Regulated Institutions Affected--Amount of Assets (\$)								
	Total FDIC Regulated Assets	Current "Small" Banks (<\$250M)	Current "Large" Banks (\$250M +)	Target Banks (\$250M to \$1B)	New "Small" Banks (up to \$1B)	New "Large" Banks (\$1B +)	% Change in "Small" Banks	% Change in "Large" Banks
Total NYS	161,311,386	3,582,238	157,729,148	13,026,084	16,608,322	144,703,064	364%	-8%
Urban	154,156,048	2,822,676	151,333,372	10,331,765	13,154,441	141,001,607	366%	-7%
Rural	7,155,338	759,562	6,395,776	2,694,319	3,453,881	3,701,457	355%	-42%
% of Total FDIC Institutions								
Total NYS		2%	98%	8%	10%	90%		
Urban		2%	98%	7%	9%	91%		
Rural		11%	89%	38%	48%	52%		

Source: FDIC Statistics on Depository Institutions database, as of March 31, 2004.