brown v. board of education
50 years
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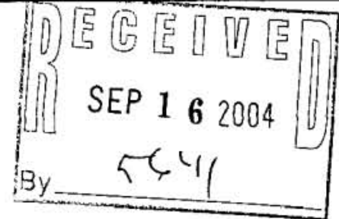

September 16, 2004

BY HAND DELIVERY

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

RE: Comments on Proposed FDIC Revisions to Regulations Implementing the Community Reinvestment Act, RIN No. 3064-XXXX

Dear Executive Secretary Feldman:

The NAACP Legal Defense and Educational Fund, Inc. (the Legal Defense Fund) appreciates this opportunity to comment on the proposed revisions to the regulations implementing the Community Reinvestment Act ("CRA"). As the nation's oldest civil rights legal organization, the Legal Defense Fund is dedicated to promoting economic justice for minority communities. Over the past several decades, the Legal Defense Fund has engaged in extensive litigation and policy advocacy to enforce and strengthen laws relating to fair housing, fair lending and equal credit opportunity.

Well into its third decade, the CRA is one of the nation's most powerful tools for encouraging community revitalization. The CRA's requirements to lend, invest and provide financial services in low-income communities have played an integral role in improving the lives of many racial and ethnic minorities. The CRA has been instrumental in increasing access to homeownership, improving economic development and expanding small business opportunities. Significantly, the CRA has helped to combat redlining practices and to ameliorate the concentration of poverty that unfortunately still plagues many of our communities.

The success of the CRA program is well documented. In 2002, the Joint Center for Housing Studies at Harvard University released a comprehensive, two-year study affirming the positive,

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is not a part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had, since 1957, a separate board, program staff, office and budget. Contributions are deductible for U.S. income tax purposes.

tangible effects of the CRA.[1] A statistical analysis presented in the study shows that entities regulated by the CRA from 1993 to 2000 provided low-income individuals with considerably more loans than they otherwise would have had the CRA not been in place.[2] Apart from the study, the total value of CRA-initiated loans demonstrates that the law has produced significant assistance to low-income communities. In 2003 alone, there were approximately $279 billion worth of small business loans.[3] From its inception, the CRA has supplied approximately $1.5 trillion in total to low-income individuals and communities.[4]

In the face of demonstrated success of the CRA program, the FDIC now seeks to curtail dramatically compliance by a significant number of financial institutions. The proposed FDIC revision seeks to broaden the definition of "small bank" to include all institutions with assets less than $1 billion. This represents a significant revision, even more drastic than the revision proposed in February of this year to increase the small institution threshold to $500 million. The Legal Defense Fund strongly opposes such a change. While we support updating the community reinvestment program generally, we believe that weakening compliance by the substantial number of institutions that would fit within this new definition will have a devastating impact on the program overall.

The proposed expansion of the "small bank" definition will significantly reduce the number of FDIC-regulated institutions that are currently subject to the more rigorous, complete CRA examination. Across the nation, the number of covered institutions would drop from 1,110 to 219.[5] Remarkably, this constitutes a reduction of about 80 percent.

The Legal Defense Fund is particularly concerned about the impact of the proposed change on residents of states with smaller financial institutions. Not all communities have an equal distribution of large and small institutions. States with rural populations and large low-income communities tend to have relatively more institutions with fewer assets, many of which will now be relieved of rigorous CRA obligations. As noted in the preamble, several organizations commenting

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[1] "The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System," by The Joint Center for Housing Studies, Harvard University, March 2002.

[2] *Id.* at 76.

[3] Federal Financial Institutions Examination Council, Press Release, July 26, 2004.

[4] "Overreaction; Lending Plan Would Hurt Ownership," editorial, *The Tallahassee Democrat*, September 5, 2004.

[5] "Local South Carolina Non-Profit Joins Campaign to Oppose Gutting of Community Reinvestment Act," *U.S. Newswire*, September 8, 2004.

on the February 2004 Notice of Proposed Rulemaking expressed concern about this particular outcome. We echo this sentiment, and believe that a further expansion of the definition will bring about even more devastating consequences.

The potential reduction in the number of institutions subject to the more rigorous CRA examination has been documented in several states. South Carolina, for example, has one of the highest African American populations of any state in the country, and is also one of the most impoverished states. Under the current regulations, thirteen of South Carolina's FDIC-regulated banks are required to undergo a complete CRA evaluation. If the new regulations are promulgated, that number is drastically cut to three.[6] The results are even more pronounced in other states. In Arkansas, the number of institutions subject to the complete CRA evaluation would fall from fifteen to two.[7] In Missouri, the number is dramatically reduced from forty to four.[8]

These reductions thus pose a severe threat to investment in low-income communities around the country. Without the presence of institutions subjected to rigorous examination, the danger is that the promise of the CRA will elude these communities. Substantially fewer institutions will be held accountable for offering loans, grants, investments, financial education, and tax counseling. Low-income communities that never had institutions with assets over $1 billion and that now would have most of their institutions characterized as "small," will have nowhere to go for meaningful investment opportunities and services.

The differences in the evaluations to which large and small banks are subjected are significant. Large institutions receive a much more stringent review. These institutions are assigned ratings for lending, investment, and service activities for low-income communities.[9] Aggregated ratings of less than satisfactory can lead to significant adverse consequences, including but not limited to the denial of merger applications. On the other hand, small institutions are evaluated according to a more lenient, streamlined test that considers primarily lending activity. Investment and service activities can only be used to improve a small institution's rating from satisfactory to outstanding, and may not be used to lower a small institution's rating.[10] As such, small institutions – whose number will

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[6]*Id.*

[7]"Local Arkansas Non-Profit Joins Campaign to Oppose Gutting of Community Reinvestment Act," *U.S. Newswire*, September 8, 2004.

[8]"Local Missouri Non-Profit Joins Campaign to Oppose Gutting of Community Reinvestment Act," *U.S. Newswire*, September 8, 2004.

[9]*Supra* note 1 at 24.

[10]*Id.*

increase dramatically under the proposed rule – are held far less accountable.

The FDIC's proposal to add a mandatory community development criterion for mid-size institutions does not remedy the serious problem caused by relieving a vast number of institutions from the most rigorous CRA obligations. Assessing compliance by mid-size institutions based on just one performance measure – however defined – does not provide an adequate substitute for scrutinizing an institution's performance according to the three-prong test based on the level of lending, investment and financial services provided. An institution could perform well with respect to one factor, and yet fail miserably on the other two. Additionally, the proposal allows the institution to choose which community development activities it will undertake, possibly to the exclusion of others.

The Legal Defense Fund also opposes expanding the definition of "community development" to encompass activities benefitting persons not considered low- and moderate-income individuals but who happen to live in rural areas. While we share the concern about the impact on rural communities, we believe a focus on rural areas generally – without regard to income level – may be counterproductive. The study by the Joint Center for Housing Studies at Harvard, which addresses CRA challenges in non-metropolitan markets, discusses the economic variation that exists in rural areas and notes that some areas such as those in Colorado are largely second-home markets.[11] Permitting institutions to meet CRA obligations by providing services to wealthier individuals, even in rural locations, defeats the major purpose of the Act: to improve access to credit for our nation's lower-income communities. Adoption of this definition as drafted will enable institutions to choose to offer services to affluent members of the community to the exclusion of all others.

The FDIC's proposal to relax regulatory standards for a significant number of financial institutions comes in the midst of criticism of the CRA for not being stringent enough. The Harvard study suggests that the evolution of the banking and financial service industries has resulted in many new forms of institutions that do not fall within the ambit of the CRA.[12] The study itself recommends reforming the CRA such that its coverage is expanded, not minimized.[13] We are concerned that the FDIC has failed to address this phenomenon while proposing to reduce the number of covered institutions subject to the complete CRA examination. More fundamentally, we are concerned that the FDIC has not conducted or presented its own research in support of its claim that the proposed changes will not result in diminished credit opportunities for low-income communities.

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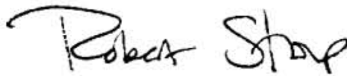
[11]*Id.* at 93-101.

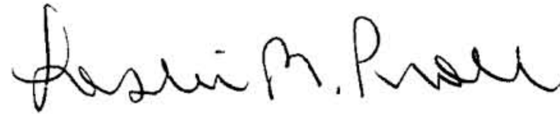
[12]*Id.* at 135.

[13]*Id.* at 135-36.

Finally, we note that many institutions have found that CRA-eligible activities can be profitable and productive of good will.[14] The FDIC's proposed regulations threaten to undo years of collaboration between institutions and low-income communities that have produced demonstrable success. We strongly urge the FDIC to decline to adopt the proposed regulations.

Sincerely yours,





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[14] *Id.* at 118-19.